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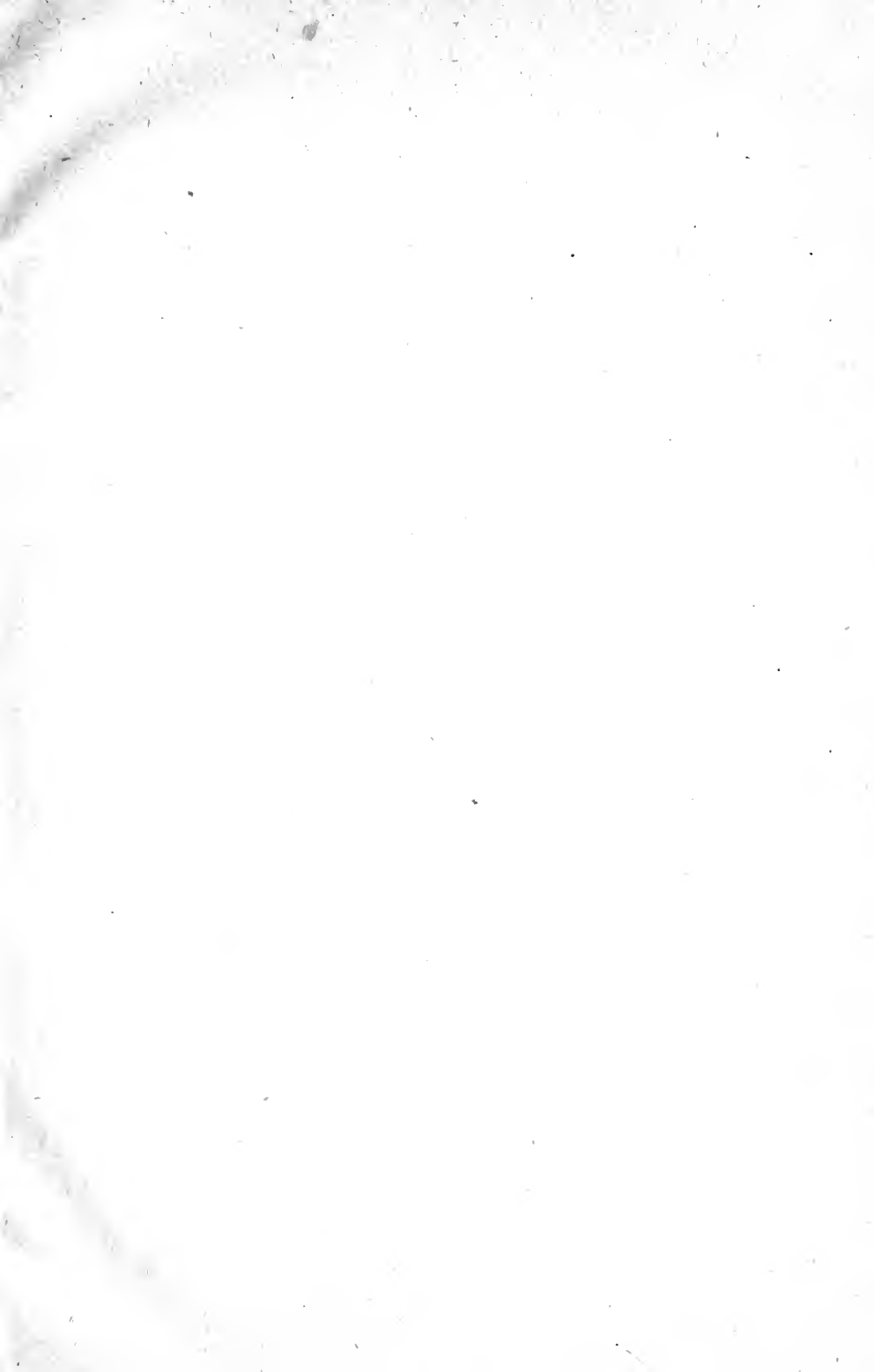
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CLAIM
OF BENJAMIN WEIL N° 447
VS: MEXICO

AWARD BY THE UMPIRE OF THE UNITED STATES & MEXICAN CLAIMS COMMISSION

**MOTION FOR REHEARING, SHOWING
THE FRAUDULENT CHARACTER OF THE CLAIM, AND DECLARATION
OF THE UMPIRE IN REGARD TO IT.**

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An appeal to the United States Court of Claims of the United States

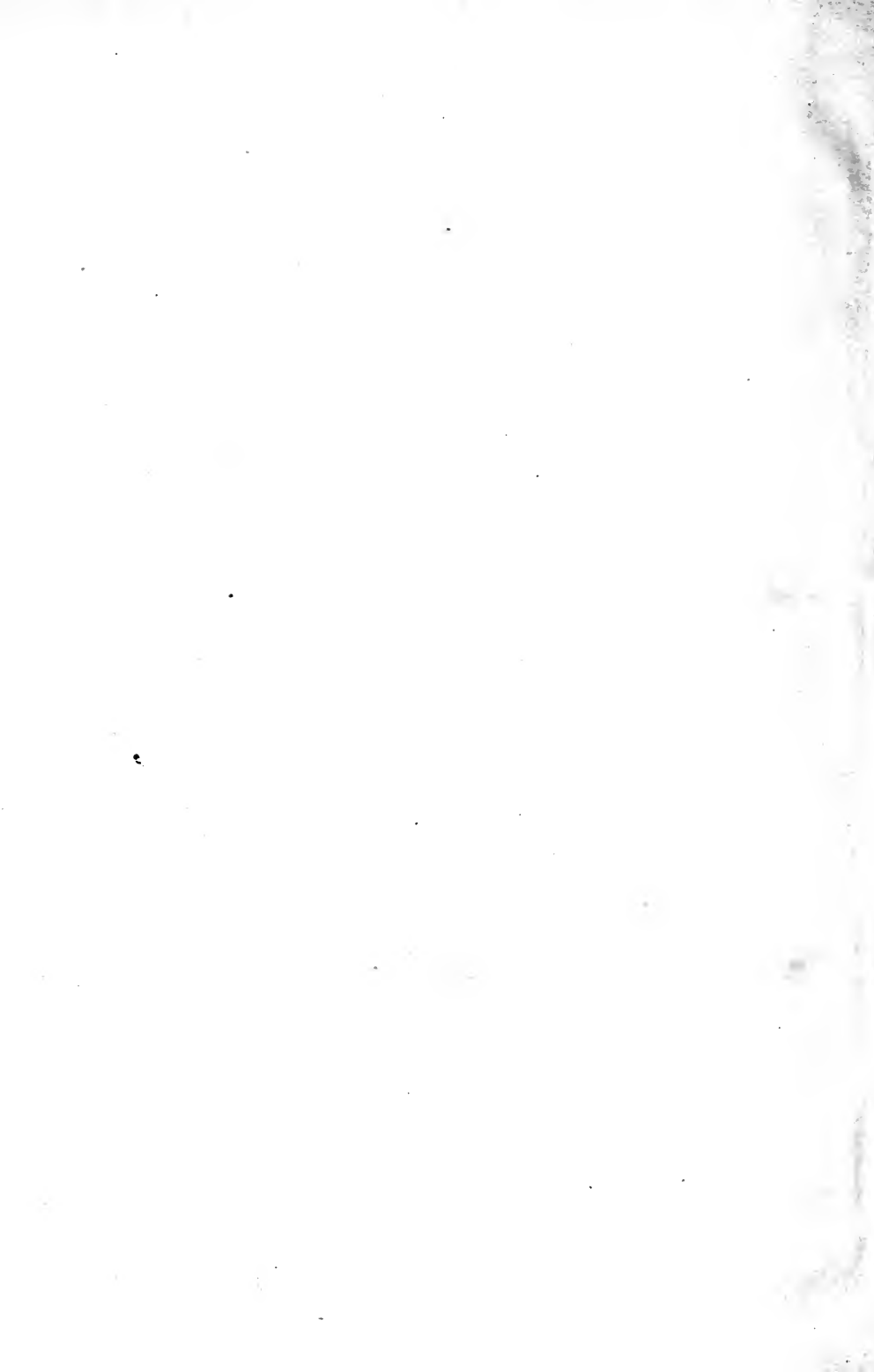
TRANSLATION BY J. CARLOS MEXIA
MEXICAN SECRETARY OF SAID COMMISSION

MEXICO
GOVERNMENT PRINTING OFFICE
1877

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CLAIM OF BENJAMIN WEIL No. 447 VS: MEXICO

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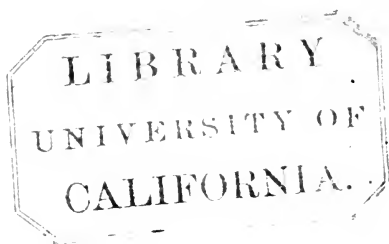
An appeal to the sentiments of Justice and Equity of the United States



TRANSLATION BY J. CARLOS MEXIA
MEXICAN SECRETARY OF SAID COMMISSION

MEXICO
GOVERNMENT PRINTING OFFICE
1877

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COPY OF WEIL'S APPLICATION.

I Benjamin Weil, a citizen of the United States of America, do by these presents declare that on or about the twentieth of September, Eighteen hundred and sixty four I had *on several trains* in the Republic of Mexico and *under my special control* the following described property belonging solely to myself: Nineteen hundred and fourteen bales of cotton average weight of five hundred pounds, or nine hundred fifty seven thousand pounds at thirty five cents per pound, making three hundred thirty four thousand nine hundred and fifty dollars. Said property was at that time, then and there on the Mexican territory *between Piedras Negras and Laredo*, etc, that it was seized and by force taken from me *by the Representative forces of the Republic of Mexico*, then in command of that portion of the country. That I *often solicited the release of my property*, but could obtain no satisfaction whatsoever; that *I have never laid this claim before either the United States or Mexican Governments asking payment thereof*; that I have never transferred my rights or any portion thereof to any other person or persons.

That I was at the time of the seizure of my cotton by the Mexican Government a citizen of the United States, as per annexed certificate of oath of my naturalization. That at the time of the seizure of my cotton by the Mexican Government I was and am now a citizen of New-Orleans, Louisiana. That I was born in Bonywiller, Bas Rhin, France, am now forty six years old and have resided in the State of Louisiana since the twelfth of June eighteen hundred and fifty, am a merchant by occupation. *That I was at the time of the seizure of my cotton stopping at Matamores, Mexico.* That my property was not insured from the fact that no insurance could be effected on waggon or land transportation.

New-Orleans, September 10th 1869.

B. WEIL.

Sworn to and subscribed before me this 13th September 1869.

H. LOEW.

U. S. COM.

(Seal.)

I, the undersigned hereby certify that the above statement is correct.

GEO. D. HITE.

Sworn to and subscribed before me by G. D. Hite this 13th September 1869.

H. LOEW, U. S. COM.

(Seal.)

Evidence in chief for the claimant.

Deposition of John M. Martin taken before me the undersigned, a notary public in and for the Parish of Orleans, State of Louisiana, on this 26th day of July A. D. 1870, and intended to be used before the Joint Commission between the United States and Mexico now sitting at Washington City, D. C. in the matter of the claim of Benjamin Weil against the Republic of Mexico, arising out of the illegal seizure of a large number of bales of cotton belonging to said Benjamin Weil, which was forcibly and unlawfully taken possession of by the liberal forces of Mexico under the command of General Cortinas, who commanded the entire District where this unlawful seizure occurred and who was known to be acting under orders from Don Benito Juarez, President of said Republic of Mexico.

Deponent being sworn in accordance with law declares on his oath that he was born in Belmont County, Ohio, is now forty five years of age, and that he now resides at New-Orleans, La., and is by occupation a steamboat Pilot.

That on or about the 20th September A. D. 1864 he was *riding in company of a large waggon train loaded with cotton* belonging to said Benjamin Weil, and to *his certain knowledge* this train had over nineteen hundred bales of cotton belonging solely to said B. Weil, which was destined to be delivered at the City of Matamoros in the Republic of Mexico; and that on arriv-

ing with said train of cotton at a place [*do not remember the exact name*] but knows this to be *between Piedras Negras and Laredo*, that the entire train as well as the cotton was taken possession of by the forces *under the immediate command of General Cortinas*: That the deponent was present at the time of this unlawful seizure and that besides his own knowledge that the said property did so belong to the said Benjamin Weil, he was likewise informed by the *teammaster* [?] in charge of said team that the entire contents, say over nineteen hundred bales of cotton was the sole property of said Benjamin Weil and intended to be delivered by said B. Weil's order at Matamoros. He further states that the entire account of over nineteen hundred bales of cotton was forcibly taken possession of by said forces under command of General Cortinas, who represented the liberal Government of Mexico, and he affirms that he witnessed and was present at the taking of said property by said liberal forces, and likewise of the *turning loose of the mules and horses and team conveying said cotton*, that he witnessed all these at the place *between Piedras Negras and Laredo* at the time and date above stated and that the unlawful seizure was forcibly made by the liberal soldiers under command of General Cortinas, and that the destination of said cotton was the city of Matamoros where all produce was taken, then and there passed through the regular Mexican Custom-houses and then shipped abroad. He further declares that the said cotton at the time of seizure *had not reached any Mexican Custom-House where the proper duty could have been demanded and would have been paid*. He further declares on oath, that said Benjamin Weil, the entire owner of the cotton seized, was considered at Matamoros, Mexico, a large operator in cotton and he knows to his certain knowledge that said Weil *has always paid duty at Matamoros to the Mexican Government* [?] *on all cotton which he received and exported at and from Matamoros, this being*

the place where the said Weil temporarily resided for business purposes; he further declares on oath that he has known the said B. Weil for many years and had often transaction with him and from his own observation as well as other parties who also transacted business with said Weil, he cannot but state that he has ever found him acting with honesty and integrity towards all. He also declares on oath that he is in no way connected or interested in this claim whatever, and that he is convinced by his own personal witness and presence of said seizure that the said cotton, say, over nineteen hundred bales of cotton was the sole property of said B. Weil and that they were forcibly taken by the liberal forces of General Cortinas representing and known then to be an officer of high rank in the liberal army in Mexico, the President of which Republic was Don Benito Juarez and further deponent says not.

JOHN M. MARTIN.

Parish of Orleans.

State of Louisiana.

Personally appeared before me, the undersigned a Notary Public in and for the Parish and State aforesaid, John M. Martin, who signed the foregoing affidavit in my presence and swore to the same before me according to law. I certify that the said John M. Martin is well known to me to be the person represented in said affidavit. I further certify that I have no interest in this or any other claim before the Mexican Joint Commission now in session at Washington D. C. In testimony whereof I have hereunto set my hand and affixed my Notorial seal of office

this 26th day of July A. D. 1870 at the city of New-Orleans,
State of Louisiana.

ANDREW HERO,

Not. Pub.

[Seal.]

Joint Commission of the United States of America and the
United States of Mexico.

State of Louisiana,
Parish of Orleans,
City of New-Orleans. } SS.

BENJAMIN WEIL.

vs:

The United States of Mexico.

Testimony on behalf of complainant taken before me George
William Christy, a duly qualified Notary Public, on this 15th
day of December A. D. 1869

Emile Lanndner, being first duly sworn, deposes and says.

I am thirty years of age, I was born in the State of Missis-
sippi, at present I reside in the city of New-Orleans, and my
occupation is that of a cotton Broker, I am not in any manner
interested in the within, either directly or indirectly, nor am
I agent or attorney of claimant, or of any person having an in-
terest in the claim. At the time of the happening of the events,
I am about to relate, I: *resided in the Republic of Mexico*; [?]
and was engaged in the occupation of a supercargo. I have
known complainant, Benjamin Weil, since the year 1861, have
always known him to be a just, upright and honest man in all
his transactions,—he was wealthy and speculated largely in cot-

ton, during the late Mexican war—*From what I have heard from others upon the subject and general report in Mexico and elsewhere I believe that sometime in the year 1864 the complainant-Weil lost a large amount of cotton [over one thousand bales] captured and taken from him by the forces of the liberal party in Mexico.* The cotton then was worth about one hundred and sixty dollars per bale in gold.

Sworn to and subscribed before me this 15th day of Dec. 1869.

GEORGE U. CHRISTY,
Notary Public.

EMILE LANNDNER.

Anchus J. M^e Culloch, being first duly sworn deposes and says.

I am 29 years of age, I was born in New-Orleans, Louisiana and at present reside in said city, and my occupation is that of a speculator in cotton. I am not in any manner interested in the within claim, nor am I agent or attorney of complainant or of any other person having an interest in the claim. At the time of the happening of the events I am to relate, in the Republic of Mexico, I was engaged in the occupation of a supercargo. I have known complainant Benjamin Weil since the year 1862 and have always known him to be an upright and honest man, just in all his dealings,—he is a man of wealth and during the late civil war in Mexico speculated very extensively in cotton. *From general report on the subject and from what I have heard stated by others in Mexico and other places, I believe that said complainant Weil, in the year 1864, had over one thousand bales of cotton taken forcibly away from him by the forces of the liberal or Juarez party in Mexico, and that said cotton, at the time of its capture or forcible detention by the forces of the liberal*

party as aforesaid was worth one hundred and sixty dollars per bale in gold.

A. J. M^r. CULLOCH.

Sworn to and subscribed before me this 15th Dec 1869.

GEO. W. CHRISTY,

Not. Pub.

George D. Hite, being first duly sworn deposes and says:

I am 33 years of age; I was born in Richmond, Va; at present I reside in New-Orleans, La. My occupation is that of a steamboat agent, *I am not in any manner interested in the within claim, et her directly or indirectly, nor am I agent or Attorney of claimant, or of any person having an interest in the said claim.* At the time of the happening of the events I am about to relate, *I was residing in Matamoros, Mexico, and my occupation was that of a contractor.* On or about the month of September 1864, the complainant Benjamin Weil *was residing in Mexico* and doing business as a trader or speculator. I was *well acquainted with him, at the time he had a very large amount of cotton I should say about nineteen hundred bales (1,900.)* Said cotton *with other cotton (?)* was forcibly seized and taken possession of *by the forces of the liberal or Juarez party* and detained; said seizure was made in Mexican Territory, *between Piedras Negras and Laredo;* said cotton when seized was worth about one hundred and seventy five dollars per bale in gold. Complainant Weil at the time of the seizure of his cotton, was a citizen of the United

States of America. I have known him since about 1855: during the civil troubles in Mexico, he was a large speculator in cotton, had the reputation at one time of being one of the heaviest speculators in Matamoros; he was wealthy, and I have always known him to be a man of strictly honorable and upright principles, whose word could be depended upon at all times.

GEORGE D. HITE.

Sworn to and subscribed before me this 15th Dec. 1869.

[Seal.]

GEORGE W. CHRISTY,
N.P.

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Joint Commission of the United States of America and of the United States of Mexico.

State of Louisiana,
Parish of Orleans,
City of New-Orleans. } SS.

BENJAMIN WEIL

vs:

THE UNITED STATES OF MEXICO.

Testimony on behalf of complainant taken before me George William Christy a duly qualified Notary Public on this seventh day of February A. D. 1870.

John J. Justice, being first duly sworn, deposes and says.

I am 37 years of age. I was born in the State of Louisiana; at present I reside at Alexandria, La., and my occupation is

that of a Stage Agent. I am not in any manner interested in the within claim either directly or indirectly, nor am I agent or attorney of claimant or of any person having an interest in the claim. At the time of the happening of the events, I am about to relate, say in September 1864, I was residing in the town of Matamoros in the Republic of Mexico and *was engaged in driving a stage from Matamoros to Piedras Negras* and other points on the road in Mexico.

I am well acquainted with Mr. Benjamin Weil the complainant in this case. That on or about the 20th (Twentieth) day of September 1864 *I. was with a train of waggons*, loaded with cotton, say a little over Nineteen hundred bales [I think nineteen hundred and fourteen Bales] said cotton was worth thirty five cents per pound. * It was worth in round numbers about three hundred and thirty thousand dollars. The bales would average Five hundred pounds [500] to the Bale. Said cotton was owned by Mr. Benjamin Weil; said cotton was taken possession of by force by *an armed force of the Liberal or Juarez Party of the Mexican States on the route between Piedras Negras and Laredo* in the Republic of Mexico.

That I was present and witnessed the taking of said property. The party taking of possession of the property at the time claimed, and as I afterwards learned, *belonged* to the command of General Cortinas. They stated that Mr. Weil would get his cotton back, or he would be paid for it.

Sworn to and subscribed before me this 7th February 1870.

GEORGE W. CHRISTY,

Not. Pub.

JOHN J. JUSTICE.

* See the Statement of B. Weil in the second motion of the Mexican Agent.

Joint Commission of the United States of American and the
United States of México.

State of Lousiana,
Parish of Orleans,
City of New Orleans, }

BENJAMIN WEIL

VS:

UNITED STATES OF MEXICO.

Testimony taken before Geo. W. Christy, Notary Public, February 17, 1872.

Samuel B. Schackelford being first duly sworn deposes and says.

I am 36 years of age. I was born in Marengo County, State of Alabama. I reside at present in the City of New-Orleans and my present occupation is that of a merchant. I am not in any manner interested in the within claim either directly or indirectly, nor am I agent or attorney of claimant or of any person having an interest in the claim. In the *months of August, September and October of the year 1864, I was in the Republic of Mexico*, acting as Agent of the Confederate Government in the clothing Department on the Trans-Mississippi Department of said Government. I had previously known the complainant Benjamin Weil, well, I knew him to be a man of large means, and dealing extensively in cotton, *I was present at Alleyton, Texas about the 1st Sept. 1864* when the complainant *Benjamin Weil, was taking out a large train, loaded with cotton as I understood to penetrate the Territory of the United States of Mexico toward Laredo*. The train was loaded with or had on board about *Two thousand (2,000) bales of cotton* to the best of my observation and the general reports at the time, and I had an opportunity

of knowing, as I was in company and contact with his clerks and agent daily. Saw Bills of Lading signed in name of Benjamin Weil for cotton, saw drafts *paid by Benjamin Weil* drawn on him for cotton, also orders, bill &c. Saw bills *paid for wagons*, labor, transportation &c., connected with the cotton, in name of said Benjamin Weil, and generally saw that all the details of the business connected with said cotton, was carried on and conducted in the name of said complainant Benjamin Weil, &c., &c. Said complainant at the time, being the *largest operator* in cotton in that section of the country. He was the free owner and master of the cotton *train* and expedition. I do not know the exact value of the cotton but it was generally supposed to be worth *half a million of dollars* or thereabouts and I so regarded it at the time. I think the price of cotton at the time was somewhere between 30 & 40 cents per pound, *nearer 40 than 30*. The bales of cotton were *larger than the average size* and according to the best of my recollection from the Bill of Lading would average about 500 pounds in weight. My business as agent of the confederate Government called me from time to time both to Texas and the United-States of Mexico. *After having left Alleyton I went over into Mexico* in the prosecution of my business as agent aforesaid, where *I again met complainant Benjamin Weil's said train*, loaded with cotton, *on the road near Laredo in Mexico*. This was somewhere *between the 10th and 25th of September 1864*. I camped with the train and the next day after I joined it, the train and its contents was seized and taken possession of by *an armed force under General Cortinas*, by violence. The complainant Benjamin Weil made demand in person and through his agents and attorneys for the return of the cotton, which was refused, but the answer to his demand was that the Government of the United-States of Mexico was good for the cotton or its value. The complainant Benjamin Weil has often

requested me to give my testimony in this case, but my absence from the city and necessity for travelling in my business has prevented me from complying with his request until this time.

SAMUEL B. SCHACKELFORD.

Sworn to and subscribed before me this 17th Febr. 1872.

GEORGE W. CHRISTY,

Not. Pub.

George D. Hite being first duly sworn, deposes and says:

I am 35 years of age. I was born in Richmond, Virginia, at present I reside in New-Orleans and *my occupation is that of a merchant.*

I am not in any manner interested in the within claim either directly or indirectly, nor am I agent or attorney of claimant or of any person having an interest in said claim. *I have been a merchant in New-Orleans for the last 15 years, except during the war. During the war I was in Texas and the Trans-Mississippi Department; during the year 1864 I was employed by the complainant Benjamin Weil as his agent to purchase and procure cotton for him in the State of Texas, which I did, paying for the cotton so purchased in gold and greenbacks furnished to me by complainant Benjamin Weil for that purpose; I also procured cotton for him by trading [it from parties in Texas who were indebted to him and giving them receipts and discharges in full, in the name of said Weil for their indebtednesses to him.*

Whenever I so purchased and procured cotton, I hired teams and send it to Allaton in Texas, as a Depot or starting point,

from when it was to be shipped by trains through the United-States of Mexico via Matamoros to foreign ports, *Matamoros being the only point at which duties could be paid*. I purchased and procured the cotton from Planters, who kept no books nor clerks; *I kept memoranda of the amount of cotton so purchased and procured and the prices paid for the same as also receipts, but all these memoranda and receipts together with other valuable papers belonging to Mr. Weil, were destroyed at the close of the war by disbanded Texas troops*; valuable papers belonging to myself were also so destroyed at the same time. *I was in Allaton, Texas, the place of Depot or starting point and assisted in making up the train which was to take complainant Weil's cotton to the United-States of Mexico as aforesaid. The train consisted fully of one hundred and ninety (190) wagons, averaging Eight (8) mules to each wagon, the mules being small the soil on the black prairies being very stiff and hard, and the sand roads being very deep and heavy. The wagons averaged about ten bales of cotton each; at the least computation (1,900) nineteen hundred bales of cotton were loaded and shipped on the train, The whole cotton belonged to and was paid for by complainant Benjamin Weil he was by far the largest and wealthiest operator in cotton in the country. I was Weil's principal agent in purchasing cotton and superintending the getting up of the train and shipping the cotton. I repeat that all the cotton shipped by the train and amounting to at least nineteen hundred bales belonged to and was paid for by complainant Weil. The wagons and mules or the train itself so called was hired by Mr. Weil, and was subject to his orders and directions. The cotton as it came into Allaton was overhauled for the purpose of being put in order, and where bales were small I enlarged them by packing and baling so as to make them weigh over five hundred (500) pounds to the bale.*

This was done for the convenience of packing and transporta-

tion. All of the cotton averaged over Five hundred pounds [500] to the bale, and cotton at that time was worth from *Forty five* [45 cs.] to *Forty eight* [48 cs.] cents per pound in gold, irrespective of classification. I started the train, with complainant's cotton [amounting to at least 1900 bales] from Allaton in Texas, in its way to the United States of Mexico in *May 1864*, to the best of my recollection with regard to dates. The train and cotton crossed the Rio Grande into the United States of Mexico, about one hundred and sixty miles [160] above Brownsville, in the early part of September 1864. That point of crossing was made for the sake of better roads there afforded. *I did not travel with the train in Mexico*, but went on to Matamoros. Whilst I was in Matamoros the men belonging to the train * come into town and announced that the train and cotton had been captured by troops and forces belonging to the liberal or Juarez Government under the command of Cortinas.

This same statement was also afterwards made to me by men and officers ** belonging to Cortinas commands and who assisted in capturing the train and cotton. This statement they made to me whilst I was still in Matamoros. After the train left Allaton, Texas, in May 1864, I left the employ of Mr. Weil, and proceeded directly to Matamoros in Mexico on business of my own as a contractor, but as my business called me up the Rio Grande in September 1864, whilst so attending to my own business, I met said train and cotton at the point where it crossed the Rio Grande 160 miles above Brownsville, and assisted in crossing it into Mexico. When I first gave my statement or Testimony in this case on the 15th day of December 1869, before Geo W. Christy Notary, neither Mr. Weil or his attorney was present, not having been informed by either Mr. Weil or his attorney upon what points my testi-

* No names are given.

** No names.

mony was desired, I simply made a general statement, without entering into details, but having since learned from the attorney of Mr. Weil, that when I made my first statement he was ignorant of my knowledge of facts and details, which he now deems of importance, at his instance, request and summons I now extend my testimony and give this statement in detail. In answer to a question by Weil's attorney, I add that the distance from Allaton, Texas, to the point where the train crossed the Rio Grande is called seven hundred miles. Such a train would hardly average eight miles a day in travel. I repeat that I met the train at the point where it crossed the Rio Grande whilst on business of my own. That I assisted at its crossing and immediately left it, proceeding directly to Matamoros on my own business.

GEO D. HITE.

Sworn to and subscribed before me this 12 March 1872.

GEO W. CHRISTY,
Not. Pub.

Award of the Umpire.

In the case of Benjamin Weil vs. Mexico n^o 447 the Umpire considers that the proof is amply sufficient that the claimant is a citizen of the United States and he cannot doubt that he is so, and was so at the time of the origin of the claim. The claim arises out of the alleged seizure by troops *under General Cortina* of cotton belonging to the claimant, for which no compensa-

tion has been granted by the Mexican Government. It is stated that the occurrence took place *between Piedras Negras and Laredo* on the 20th of September 1864.

The Umpire considers that the facts put forward by the claimant are sufficiently proved, viz: that the cotton belonged to him; that it was seized and taken *by troops belonging to the Mexican Government and under the command of General Cortina*; that the place at which the seizure took place was *between Piedras Negras and Laredo*, which must therefore have been in one of the Mexican States of Coahuila and Tamaulipas; and that the cotton, which was avowedly on its way to Matamoros for export was seized or on about the 20th of September 1864.

These facts are not disproved by evidence of the part of the defense. The argument of most weight which has been suggested by the latter is that all communication with points occupied by the enemy was forbidden. But there is no proof that any of the territory through which the cotton had passed, or was intended to pass, was occupied by the enemies of the Mexican Government. It is true that the States of Coahuila and Tamaulipas were under martial law; but that state of things did not justify the Mexican authorities in seizing the goods of private persons and neutrals without giving them compensation; or if they thought it necessary to seize the cotton in order that it might not fall into the hands of, or even pay duty to, the enemy, they were still bound to indemnify its owner. The Umpire has been unable to discover any proclamation or other manifesto by the Mexican Government to the effect that either Coahuila or Tamaulipas was occupied by the enemy, and it is a historical fact that the city of Matamoros was first occupied by the French forces on the 26th of September 1864.

The Umpire is, therefore, of opinion that the claimant was committing *no illegal act* in transporting his cotton through Coa-

huila and Tamaulipas with destination to Matamoros on the 20th of September 1864 and that as it was seized by Mexican authorities, for whatever reason it may have been seized, the Mexican Government is bound to indemnify the claimant.

The claimant asserts that these were 1914 bales of cotton. The witnesses agree that there were not less than 1900, which latter number the Umpire will therefore adopt. The average weight of each bale is shown to be 500 lbs and the value *35 cents* per lb. But with regard to the value, it must be remembered that the cotton was still a long way from Matamoros when seized and that there is always some risk of damage being done to it during the journey. The Umpire therefore thinks that it will be fairer to put the value at *30 cents* the lb.

The Umpire therefore awards that there be paid by the Mexican Government on account of the abovementioned claim the sum of *two hundred and eighty five thousand Mexican gold dollars* [\$ 285,000] with interest at 6 per cent per annum from the 20th of September 1864 to the date of the final award. *

(Signed.)

EDWARD THORNTON.

Washington, October 1st 1875.

* The Umpire having declared on the 31st of July 1876 that one decision signed by him in that date was to be considered as the final award in regard to interest allowed, those corresponding to the Weil's case award amounted to the sum of \$ 202,810 68 cents and the total awarded to the sum of \$ 487810 68 cents.

BENJAMIN WEIL.

vs. Mexico

A. D. no—447

Argument on motion for a rehearing

When the party who has been condemned to pay the enormous amount of half a million of dollars offers to show to the judge who passed sentence on him that he, the judge, has erred in examining the case, said judge, who can only be guided in his decision by justice, equity and the principles of public law, can by no means refuse to take into consideration whatever may be represented to that end.

The undersigned, of his own accord and following likewise the instructions received from his Government has refrained from asking revision of certain cases, in which, according to his judgment, there were sufficient grounds for revising, simply because he did not wish to increase the labors of the Umpire, whose laboriousness and well known desire to bring to an end the difficult task he so kindly accepted, deserve the greatest consideration from the two Governments concerned in the arbitration.

There has been a case for alleged loss of merchandise [*Dunbar & Belknap*] in regard to which after the Umpire had given his decision, the undersigned had the opportunity to peruse in the files of another case a document in which the interested party had freely stated, shortly after the occurrence of the fact, that prior to that very fact, he, claimant had taken out from the place all the goods for the robbery of which he afterwards presented his claim before the commission. The Agent of Mexico nevertheless did not ask for rehearing.

Again in another case (Heirs of Schreck) in which the Agent of the United States obtained a rehearing, the undersigned could have asked for a second rehearing on the ground that the acts complained of had been committed by an officer declared to be a rebel by several decision at the time those very acts were perpetrated.

The relatively small importance of those two cases, in which, as it appeared, there were sufficient grounds to move for a rehearing, decided the Government of Mexico not to make such a motion, preferring rather to suffer the burden their decisions entailed than to multiply the labors of the Umpire.

But in the case of Benjamin Weil where Mexico has been condemned to pay a sum amounting to nearly half a million of dollars, the Government feeling perfectly certain that a reexamination of the circumstances of the case, cannot but lead to the discovery of the absolute lack of ground on which to base the claim, believes it would not fulfill an imperious duty to the country, whose interests it represents, should it not employ its best endeavors to obtain reconsideration of the case.

Under this impression the Mexican Government has given its instructions to the undersigned, who for his part requests that the Umpire should be pleased to peruse carefully this ar-

gument, and to weigh with his characteristic rectitude and impartiality all the reasons it contains.

The sum of \$487.£10 68 cents awarded in favor of the interested parties in this claim, adding the interests up to the 31st of next July, date in which the Umpire can make his final award, is indeed a very large sum for a country like Mexico, impoverished by more than half a century of civil and foreign Wars, and which cannot stand an increase in her taxes without retarding, at least, her regeneration, just now in its inception.

The undersigned by no means pretends that this consideration alone should decide the Umpire's mind to revoke the decision we are referring to. Although it must of course go a great way towards inclining his mind to take into consideration the reasons I am about to offer with this object.

It certainly matters little or nothing that Mexico should have to impose on itself extraordinary sacrifices and even to renounce all hopes of its prosperity, in order to cover a debt; but undoubtedly the larger the debt, the more plain and unquestionable must be the justice of condemning her to its payment.

The undersigned therefore again requests with all due respect that the Umpire should examine the reasons he will set forth, because those reasons tend to show that through error a debt has been considered as just which not being so, will have to weigh on a country to which it will be enormously onerous.

It has been alleged in this case that 1914 bales of cotton belonging to Benjamin Weil, starting from Texas to Matamoros in the Republic of Mexico for exportation, were seized by the troops of that country under the command of General Cortina on the 20th of September, 1864 between Piedras Negras and Laredo.

The Umpire has considered the case as one of expropriation of goods belonging to neutrals, without a corresponding indemnification.

The points of fact are as follows :

1—Whether there ever was on the 20th of September 1864 cargo of 1914 or 1900 bales of cotton belonging to Benjamin Weil between Piedras Negras and Laredo.

2—Whether any troops of the Mexican Government belonging to the command of General Cortina did seize said cargo.

As to the points of law, they seem to be the following :

1—Admitting said facts, was the act claimed legal and justifiable ?

2—Is it the duty of the Mexican Government to indemnify Weil, for the seizure of the cotton ?

3—Has said Government refused to fulfill such a duty, denying the indemnification demanded of it ?

The undersigned cannot comprehend why, when the question of the responsibility of a Government for certain facts is at stake, the same proof as to these facts should not be required as is required when the responsibility attaches to a private individual.

In one case as well as in the other, we can only admit satisfactory evidence on the following points :

A.—How and from whom did claimant acquire the cotton ?

B.—Who were the owners and conductors of the waggons employed in the transportation ?

C.—Where and at what date did those waggons cross the Rio Bravo to enter on Mexican territory ?

D.—At what custom house, if any, were the duties paid, and the permit to introduce into the country or the corresponding *guia* obtained ?

E.—What is the name of the Commander or officer who ordered or even witnessed the seizure of the cotton ?

F.—What steps, if any, did the interested party take in order to prove at the time such seizure, to obtain a voucher for it and to request an indemnification?

A.

As to the first of these points, in lieu of any satisfactory evidence which could be no other in this case but the presentation of the books, vouchers and accounts, or, at least, the designation of the parties from whom the property was acquired—we have two testimonies conflicting with each other in material points, viz: the testimony of George S. Hite, in his 5th deposition, and that of S. B. Shackelford.

The former said—exhibit n^o 10, on the 15th of December 1869, —that when the facts in regard to which he deposed took place he resided in Matamoros, Mexico, and his business was that of a contractor.

That in or about the month of September 1864, Weil was residing in Mexico—without designating any particular place—doing business as a merchant or speculator.

That deponent *knew Weil much*—he only knew him—and Weil then had a large amount of cotton.

That deponent *should say* that the cotton amounted to about 1900 bales.

This same individual who on December 15th 1869, expressed himself in such a doubtful tone, simply saying that he *knew* Weil at the time referred to, on the 12th of March 1872, two

years and three months after having subscribed said deposition, said in another—exhibit no. 23—:

“That during the year of 1864—he was *employed* by Weil as an agent to buy and get cotton for him in the State of Texas, which he did, paying for the cotton he bought in *gold and green-bacws* which Weil *had supplied him with*.

How can it be reconciled that Hite should be residing in Matamoros in 1864 as a contractor, and during the same year should be employed in making purchases of cotton for Weil in Texas?

How is it that Hite in his first deposition should simply say that he knew Weil in the year 1864, if it was true that during the same year he was in Weil's employ?

How could he have any doubt about the amount of cotton that Weil had, if he himself had bought it?

Moreover, Hite, Weil's so-called agent for the purchase of cotton in Texas, does not designate a single one of the parties from whom he purchased, limiting himself to say that they resided in Texas—«from parties in Texas.»

What court in the world would attach the slightest importance to such a doubtful and vague testimony as this is?

As to the time Hite made the purchases, he only designates them by the departure of the train from Allaton, for which he assigns the month of *May 1864*, «according to his best belief in regard to dates.»

The other witness on the point we are considering, S. B. Shackelford said (exhibit no 21) on February 17th 1872:

«That in the months of August, *September* and October 1864, he was the Republic of Mexico in the capacity of Agent of the confederate Government:

Tha the was present in *Alleytown*, Texas, about the 1st of Sep-

tember, 1864- when *Benjamin Weil*, the claimant, was taking out the train loaded with cotton.

So far, we immediately find that Shackelford contradicts himself and contradicts Hite.

If Shackelford was in the Republic of Mexico during the months of August and September, it is a physical impossibility that on the 1st of September he should have been in *Alleyton*, which place if, as it appears, is the same that Hite calls *Allaton*, is seven hundred miles distant from the Rio Bravo or Rio Grande, according to Hite's testimony, no 23.

But the other contradiction to which we have alluded is still more glaring.

Hite says that the train loaded with Weil's cotton was sent off from Allaton in *May, 1864*, and Shackelford that it was on the 1st of *September, 1864*, that is, about four months later.

How can we possibly reconcile this difference of dates on such a material point?

Besides this, we notice that nowhere, in the whole deposition of Shackelford, is Hite's name mentioned as agent of Weil, and rather it is given to be understood that said Weil intervened personally in the purchases of cotton, the drawing and paying of draughts &c. &c.

But above all, in all the many words by which this individual has swelled his deposition, not once can we find the name of any of the persons from whom the purchases were made, nor any particular circumstance in reference to them.

Here is all the evidence that Weil did get the cotton we are referring to:

The testimonies of two witnesses which are conflicting in themselves and conflicting with each other.

Two witnesses who according to their depositions, could not

have been in Allaton and Matamoros at the time when they say the purchases of cotton were made at Allaton or Alleyton.

Two witnesses, in a word, who calling themselves eye witnesses, do not give the names, nor any particular sign of the persons with whom the valuable transactions they relate were carried on.

How can a contradictory proof of such vague assertions be required?

It would be tantamount to ask for an impossibility, to pretend that it should be proved that no body ever did sell any cotton in Allaton or Alleyton to Benjamin Weil before May or September, 1864. To obtain such evidence, it would have been necessary that all and every one who could have sold any cotton at the time, not only in Allaton, but also in other places not designated, where Hite says he made some purchases on Weil's account, should present their books or give their deposition.

Is this reasonable? Is it even possible? Evidently not, and the undersigned feels perfectly sure in stating that claimant has not proved where, when and from whom did he get the cotton in question.

B.

Who were the owners and who the conductors of the waggons on which the cotton was shipped?

Neither Hite nor Shackelford say a single word about this, but far from it, they contradict each other in regard to the nature of the contract entered into for said shipment.

In Hite's deposition—exhibit no. 23—it was originally written that the train consisting of waggons and mules, belonged to Weil; but these words were stricken out, and ahead of them were written these others: «that the waggons and mules, or the train, as it is called, had been hired by Weil, and was under his orders and directions.»

Shackelford says that claimant was the *only owner and master* of the cotton, of the *train* and of the expedition. Exhibit no. 21.

John Mc Martin says that—exhibit no. 9—he was riding accompanying the train; but he does not say that he was the conductor, and though he speaks of the teammaster, he doesn't give us his name.

One Justice says that he was with the cotton's train at the time of its capture; but he doesn't mention either the name of the conductor or of any of the persons under whose charge it was.

This being the case, can it possibly be required that the Government against whom this claim is brought should prove that no owner of waggons ever sold or hired to Weil the train on which he might have shipped his cotton, and that no American or Mexican teamster did conduct such train?

It would have been necessary to this end to ascertain who all were the owners of waggons in Allaton or Alleyton during the months of May and September 1864 and who were the conductors; and this once accomplished, to get all and every one of them to give their depositions on this particular.

This would have been absolutely impossible; whilst on the other hand, should the fact we refer to, be true, nothing would have been easier for claimant than to produce the depositions of

the waggon owners or conductors, or to designate them, at least, by their names.

Is it likely, is it credible that claimant should not know who were those persons or some of them, at least?

In a case similar to the present, where it was alleged that a robbery of goods and seizure of mules had been committed by troops, under the command of Cortina—*James Ford vs. Mexico. no. 851*—the commissioner of the United States in dismissing the claim, used the following language:

«Thus Ford was robbed of property of the value of \$105,000.»
«He never complained of it to the authorities of his own country or of Mexico, but patiently sat down under a loss of that magnitude»

«The largest item consists of the goods taken at Bagdad in May 1865. The only proof a *merchant with that capital* condescends to offer us of such a loss is the *ex-parte* affidavit of one *Hite* to the effect that *he was his clerk* and that he sustained such loss. That is all.»

«*No invoices, no books of account, no merchants in Bagdad or New Orleans to corroborate, no charter party of a vessel, or bills of lading, only Hite.*»

«When he comes to prove the loss of a train worth \$30,000 with eight mules, drivers, train master, &c, &c, he brings in the *train master*, an accidental looker on..... and one Townsend who says the stock of goods has been sent on the trains and was captured *between Bagdad & Matamoros* by Cortina.»

It looked strange and unlikely to Mr. Wadsworth that Ford should see impassible his loss of \$105,000; that he should not have complained of it neither to the American nor to the Mexican authorities; that he should produce no other proof as to the existence of the goods than the *ex-parte* affidavit of one *Hite*, so called *clerk of Ford*; no invoices, no books of account, no tes-

timony whatever of the *merchants living at the place in which claimant* said he lived, nor of the place where *he made his purchases; no vouchers of freights of the vessels on which he shipped the goods* to Bagdad, nothing in a word but *Hite's* assertion.

It seemed likewise strange to Mr. Wadsworth that to prove the seizure of the train that must have been in charge of at least a train master and eight drivers, the only evidence produced was the testimony of *the former*, that of an accidental looker-on, and of another fellow who never said, how did he come to know the fact.

What shall we say, then, when no voucher at all is presented of the charter of a train said to have been seized, when *not a single individual, out of a hundred & ninety—instead of nine—*has ever declared as to the capture, and when, finally, there is nothing more than another *Hite*, who transferring himself, by way of enchantment, from one place to another, at a distance of over 800 miles, and appearing now as a contractor, and now as a simple clerk of Weil, pretends to give his testimony about the principal facts of the case?

C.

Where and at what date did the waggons carrying the cotton crossed the Rio Bravo?

On this point, decisive in its importance, we have no other data than the pretended testimony of G. Hite.

He says:—exhibit no. 23.

«The train and cotton passed the Rio Grande into the United States of Mexico about—between lines—one hundred and sixty miles—160—above Brownsville in the earlier part of September 1864.»

It appears that at first it was written in the affidavit, both in letters and figure «sixty miles;» but in must have seemed too small a figure. and a hundred was added thereto.

But evidently the person who did that, whoever he may be, never knew the places we refer to, and did not even take the trouble to consult with a map.

The undersigned annexes to this argument a map, and in will be seen by it that Laredo is at least seventy five Mexican leagues, or two hundred and twenty five miles distant from Brownville.

Hite, and all the witnesses, and even claimant himself say that the capture took place *between Piedras Negras and Laredo*, on the 20th of September 1864; that is, about fifteen days later than the time the waggons, crossed the river, according to Hite. The crossing point then must have been far above Laredo, about three hundred miles up the river, which distance, added to that from Laredo to Brownsville, make a total of over five hundred miles.

It follows, therefore, either that it is false the train crossed at 160 miles above Brownsville, or that it is false the capture of the cotton took place between Piedras Negras and Laredo on the 20th of September 1864.

Hite's affidavit well deserves a special study, in so far as it relates to the point we are examining.

Following the words just quoted we read:

«That point of crossing was made for the sake of better roads there afforded.»

Hite ought to have said what route did the train follow from Allaton to the Bravo, and how was the crossing of the river accomplished, for although, as it is well known, this river is fordable at several places, nowhere can it be crossed by waggons, which must be crossed over on flat boats. Such places, where they exist have their names; how is it that Hite did not designate the name of the place where the train crossed?

«I did not travel says he with the train in Mexico, but went on to Matamoros.»

«Whilst I was in Matamoros the men belonging to the train—(who were they? What were their names)—came into town and announced that the train and cotton had been captured by troops and forces belonging to the liberal or Juarez Government under the command of Cortina. This same statement was also made to me by men and officers belonging to Cortina's command and who assisted in capturing the train and cotton—the question suggests itself again: Who were they? What were their names?—this statement they made to me *whilst I was still in Matamoros.*»

Whoever may read Hite's affidavit up to this point, will surely be left under the impression that affiant never heard anything more about the train from the time it got off from Allaton until the report of its capture was made.

But immediately afterwards he says: «After the train left Allaton, Texas, in May 1864. I left the employ of Mr. Weil and proceeded directly to Matamoros in Mexico on bussiness of my own, as a contractor.»

This paragraph of the affidavit was written with the intention of reconciling Hite's intervention in the purchase and shipping of cotton from Allaton, with the occupation, which, in his first affidavit, he said he had at the time of that purchase in Matamoros.

Is it believed that by simply saying that up to May he was


in Allaton as Weil's clerk, and after that date, in Matamoros as a contractor, those two conflicting notions have been explained.

«At the time of the happening of the events I am about to relate. I was residing in Matamoros, Mexico, and my occupation was that of a contractor. *I was well acquainted with him,*—Weil—at the time he had a very large amount of cotton.»—Affidavit of December 15th 1859—Exhibit no. 10.

«*During the year 1864* I was employed by the complainant Weil, as his agent &c.» Affidavit of May 12th 1872—Exhibit no. 23

The year is, therefore, divided in two parts: one, up to May, during which Hite was employed by Weil, a circumstance which he did not remember in 1869, but he could recollect in 1872, and the other during which he was a contractor acting on his own account.

«But as my business—he adds—called me up the Rio Grande in September 1864 whilst so attending to mi own business, I met said train, and cotton at the point where it crossed the Rio Grande 160 miles above Brownsville and assisted in crossing it to Mexico.»

In this affidavit likewise the figure 1, at the left hand of the 60, seem to have been written afterwards, as it stands out on the margin [ N. B.] Had this statement been made with a knowledge of the localities, instead of a number 1, *four* should have been written, thus avoiding the untimely trip made by Hite from Matamoros to a place *whose name he did not want to recall*, in order to attend to his own business, which he did not particularize, said trip giving him the opportunity to engage in Weil's affairs, in which he did not remember in 1869 having taken any part whatever, and in which it is clear, he took none before the preparation of this claim.

It seems useless to the undersigned to insist that Hite over-

throws completely the claim relating the physical impossibility that the train crossed the river at a hundred and sixty miles above Brownsville at the beginning of September 1864, on its way to Matamoras, and that it was captured above Laredo, distant, at least, two hundred and twenty five miles from Matamoras.

D.

It has been said at the beginning that the place at which the cotton was introduced on Mexican territory, is a point of *decisive importance* in the case. So it is really.

Let the concocters of this claim say what they wish, about no duties being collectable in 1864 on cotton introduced into Mexican territory, nobody can reasonably believe that said introduction should be allowed to be made at any place whatever and without due notice being given to the revenue officers of that Republic.

The «Ordenanza General de aduanas marítimas y fronterizas» (Articles for the collection of duties at the maritime and *frontier* custom-houses) of 31st of January 1856 was in vigor at that date. In said «Ordenanza» we find the following enactments:

«Article Ist The frontier Ports and custom-houses opened to foreign trade are.

On the Northern frontier:

Matamoras,

Camargo,
Mier,
Piedras Negras,
Monterey Laredo,
Presidio del Norte,
Paso del Norte.»

«Article 7th.—All foreign goods, products and effects introduced by the ports opened to foreign trade, shall pay the following duties.»

«Numerical order—Cotton.—Fixed rates.

1—Raw cotton, with or without seed, brute weight, \$ 1.50 the quintal.

Article 10 —Payment of duties «The duties imposed by this *Ordenanza*, shall be paid in two installments: one half of them at forty days and the other half at eighty days, counting from the day following the unloading of the vessel. *One half* of the amounts that correspond to each installment *shall be paid at the ports*, and the balance at the capital of the Republic.»

«The goods introduced by the frontiers shall enjoy for the payment of duties the same privilege of forty days established for the ports.»

«Article 21.—Any person residing in a foreign country not at war with Mexico, can send merchandize and goods to the Republic, provided they be not prohibited by this *ordenanza*.»

«The captain of the vessel carrying said goods, has the obligation to present a general manifest according to model no. 2.

«The person or persons sending the goods must form a detailed invoice of the same, according to model no. 3.»

«Immediately after any vessel carrying a cargo of goods shall have anchored, the *comandante del resguardo*, [custom-house officer] shall go on board and demand of the captain the manifest or manifests of all the cargo &c.»

«Article 23.—Of contrabands.

«Are cases of contraband:

«1.—The clandestine introduction of merchandize by the sea-coasts, ports, *rivers* or any other place *not opened by law to foreign trade*.

«2.—The introduction of merchandize by the ports or *frontiers*, uncovered by the documents established in this Ordenanza, or at unusual hours, &c.

«3.—The unloading, transfer or *transportation of merchandize* without previous knowledge of the custom-house officers, or without the formalities established in the preceeding articles.

«4.—*The transfer of goods into the interior without the proper documents to show they were legally imported, and all the duties established by the tariff, paid.*

«Article 26,—In the cases specified in paragraph 1st, article 23, the penalty shall be of *confiscation and loss of the whole cargo* of merchandize, and of the vessels, waggons and mules on which carried.

«2. For paragraph 2^d of same article, the same penalties as fixed by the 1st part of this article are imposed.

«3. For the cases determined by the 3^d paragraph of said article 23th, *confiscation and the total loss of the goods* is imposed.»

Therefore, contrary to the assertions of Weil's witnesses, we have a law which explicitly and verbatim prescribes:

«That foreign goods can *only* be introduced into the Republic of Mexico, through certain ports and *frontier custom-houses*.

«That the introduction must be made under certain formalities.

«That at the same ports or *frontier* custom-houses of entry one half of the import duties must be paid.

«That the introduction of foreign effects through places not duly authorized for that purpose, without the legal formalities and due knowledge of the corresponding officers, is a contraband punishable with the penalty of *confiscation and total loss of the effects.*»

Besides this law, the knowledge and fulfilment of which was obligatory on the part of Weil, the Mexican Government, then at Monterey, at the date in which it was pretended—by Hite, not by Sackeford—the cotton had left Allaton, issued the following circular:

«Cotton transferred into the interior through the frontier custom-house of Piedras Negras only pays *there* in the shape of transit duties, one dollar per quintal, in view that the largest portion of it is destined to be sent abroad; but as another portion of it is carried into the interior for the consumption of the national factories, this portion must pay a dollar and a half as *established by the te Ordenanza....* Monterey May 17th 1864—Diccionario de Legislacion Mexicana—verb. *algodon*, vol. 1st p. 36th.

Therefore, at the beginning of September 1864, Weil's cotton could *only* have been introduced into Mexican territory, through the frontier custom-house of Piedras Negras, and paying at that one dollar per quintal, *under penalty of confiscation and the total loss* of the cargo, which is the penalty established by the *Ordenanza* referred to in the circular.

The fact sworn to by some witnesses, that the introduction of the cotton was made without touching any custom-house opened to foreing trade, and, consequently, without due knowledge of the corresponding custom-house officers, *should it be true*, would of itself constitute *a manifest infraction of the law, implying confiscation and the total loss of the cotton..*

We have, therefore, on the one hand, that *it is not possible* that the cargo, supposed to be Weil's property, should have passed from American to Mexican soil, *at 160 miles* above Brownsville at the beginning of September, 1864, to appear on the 20th of the same month and year *three hundred miles at least above Brownsville*; and on the other, that even admitting its possibility, it would not have been lawful.

E.

When this claim was for the first time initiated on the 10th of September 1869, five years after the occurrence which it is said, gave rise to it, claimant stated, that his cotton had been seized and taken from him by Representative forces of the Republic of Mexico, who at the time were in command of that portion of the country lying between Piedras Negras and Laredo—Paper no. 4.

No designation was then made of such forces, or of the officer under whose command they were.

Laredo is the furthest village in the Northwestern part of Tamaulipas, at a distance of hardly six Mexican leagues from the boundary line with the state of Coahuila.

As it was not determined in the memorial, nor has it been stated afterwards whether the alleged capture was made in the State of Coahuila or in that of Tamaulipas, the simple assertion that it was made by the republican troops in command of that portion of the country lying between Piedras Negras and Laredo, is tantamount to no designation at all.

Emily Lanndner in his affidavit of the 15th of September 1869, declared having heard that *sometime* in 1864, Weil *lost* over a thousand bales of cotton, captured by the forces of the liberal party in *Mexico*.

He does not designate the forces, nor the place where the capture was made—Paper no. 10.

Anchus Mc Cullock repeats exactly what Lanndner had declared, only adding that the forces who made the capture belonged to the liberal or *Juarez party*.—Paper no. 10.

Geo. D. Hite in his testimony of December 15th 1869, only said that the cotton was confiscated by the forces of the liberal or Juarez party, between Piedras Negras and Laredo.—Paper no. 10.

The so called Justice on February 7th 1870, said that the troops who took the cotton *claimed to belong* to the forces under the command of General Cortina.—Paper no. 12.

John Mc. Martin, on July 26th 1870, said: that the troops who took possession of the cotton were under the *immediate command* of General Cortina.—Paper no. 9.

S. B. Shackelford on February 17—1872, said that the train and its contents were seized near Laredo, by an armed force *under* General Cortina.—Paper no. 21.

Finally, Geo. L. Hite, in his last deposition of March 12th 1872.—Paper no. 23—said that the train and cotton were captured by troops and forces under General Cortina, and that

deponent was told so by soldiers and officers who *assisted* in the capture of the train and cotton.

It is seen by this reference of all the testimonies relating to the point we refer to, that at first, the capture was attributed to some undetermined force, but at the end, it was imputed to Cortina, by a single pretended witness: Martin.

This testimony, if of any weight, designates Cortina as the author of the act claimed.

The decision in the case seems to be based on the same idea, if the undersigned does not misinterpret the following phrase: «That it—the cotton—was seized and taken by troops belonging to the Mexican Government and under the command of General Cortina.»

What principally suggests to the undersigned this interpretation, is the fact that the Umpire has established the just rule not to hold any of the two Governments, sued before him, responsible for acts of their respective troops, unless when the commander or officer who authorized, or, at least, witnessed, the act in question, is personally designated.

Bearing on this point, the undersigned can cite the following decisions:

In the case of the «Siempre viva Mining Company vs. Mexico, no. 98:

«But neither he—Mr. Leya—nor the old man who was subsequently in charge, nor do any of the witnesses, give detail as to the amount or value of the stores or number of animals said to have been seized, or *the names of the officers who seized them.*»

In the case of Juan Manuel Silva vs. Mexico no. 92:

«But whoever were the persons who destroyed the property, they are insufficiently designated, for *no names are given*, and

the mere appellation of «revolutionist» would show that the Mexican Government is not responsible for the losses suffered by the claimant. The Umpire cannot *upon mere conjecture* condemn the Mexican Government to pay compensation.»

In the case of «W. C. Tripler vs. Mexico,» no. 144:

«There is also as much more evidence that nothing was touched in the house by Orozco's force, as that it was robbed and destroyed. But if even the latter statement be true, it is not clearly shown by whom the acts were committed, *or that they were done by order or in presence of an officer*; and if the robbery and destruction were committed by soldiers only, without the order *or presence of an officer*, the Umpire does not consider that the Mexican Government can be expected or called upon to make compensation for such acts.»

In the case of «Christian Gatter vs. Mexico, no. 343:

«With regard to the robbery of goods from claimant's store, there is no proof that it was done *by the order, under the control or in presence of any military or other authority*. Indeed, the robbery was evidently committed by lawless and plundering soldiers, and however deplorable it may be, it unfortunately happens occasionally in all armies *whilst the Governments to which they belong cannot be held responsible for such unauthorized violence*.»

In the case of «Charles C. Haussler, vs. Mexico» no. 580:

«The precise date of the occupation of claimant's farm by Mexican troops is not stated; *nor is it shown that they were under the control of an officer, or if so, who was that officer*. The witness Hartman says that *«the farm was in possession of a mixed force of Mexicans and Indians belonging to the command of General Angel Martinez,» but no mention is made of any officer who was in charge of these men*.»

In the case of José María Anaya vs. the United States:

«No mention is made of *any officer*, nor is it shown that an officer was present, or that the plunderers were under the control or command of an officer.»

The undersigned in citing these decisions, does not pretend to apply them entirely to the case under consideration, but only in so far as to the spirit that prevails in them all, viz: *not to make a Government responsible for acts committed by its troops, when the name of the commander or officer who, at least, authorized them with his presence is not given.*»

Seeing therefore in the decision of Weil's case that the Mexican Government is held responsible for the alleged seizure it refers to, and that the only name mentioned is that of General Cortina; the undersigned has concluded that *Cortina is considered to be the author of the act claimed.*

This being so, the undersigned can show in the most conclusive manner the impossibility of the fact.

General Cortina was in the city of Matamoros on the 20th of September, 1864.

In the file of John W. Hanson, no. 760, paper 11, fol. 23, there is an order signed by the General in that city and at that date. The undersigned promises to show another order of the same date, signed also by General Cortina at Matamoros.

But leaving this aside, there is a *public document*, unobjectionable in its character, that places out of any shadow of doubt the fact that on that day, said Cortina was in Matamoros.

This document is the official report made by the imperialist General Tomas Mejia to his Government, about the surrender of Matamoros by Cortina on the 26th of September, 1864. It is found in the *Diario Oficial* of the Empire, corresponding to the 13th of October of the same year, a copy of which is annexed

hereto, and the undersigned can present the original in the set of said *Diario*, now in his hands.

Mejia reports to have commenced his movement from Cadereyta to Matamoros, on the 15th of September 1864, and to have received on his way, *the 23^d*, a communication addressed to him *by Cortina*, Military Commander of *Matamoros*, making inquiries about Mejia's intentions.

Mejia continued to move on Matamoros, and he reached this place on the 26th. Between Matamoros, therefore, and the place where Mejia received the communication, there is a distance that the bearers of the despatch could not have saved in less than two days.

In addition, the undersigned can present numerous testimonies he also possesses, of persons residing in Matamoros, all of which declare unanimously that General Cortina remained *permanently in Matamoros from August 24th 1864*.

Amongst those persons, there are two of those commissioned by Cortina to make arrangements with Mejia about the surrender of the place: Don Rafael Cervantes and Don Miguel de la Peña.

It is evident by what has been said, that it was impossible for Cortina to have seized on the 20th of September, a load of cotton between Piedras Negras and Laredo, at two hundred and eighty miles at least from Matamoros, where he was at that date; and, as no other commander or officer is given as author of such capture, its responsibility cannot be imputed to the Mexican Government,

To establish this responsibility it does not suffice to say that those who made the capture *belonged* to the troops under Cortina, as it did not suffice in the case of Haussler to say that the troops in possession of the farm were *under General Angel Mar-*

tinez, without mentioning the officers who were at *the immediate* command of said troops.

The very fact that it is not determined whether the capture was made in the state of Coahuila or in that of Tamaulipas, renders it extremely uncertain that the troops whom the deed is attributed to, should belong to the command of Cortina, whose authority did not extend beyond the limits of the last named State.

The simple assertion that a force belongs to a Government is not enough to hold that Government responsible for the acts attributed to said force, unless these two points are satisfactorily shown: first, that such a force did really exist at the place named; and, second, that it belonged to the Government who it is claimed, is responsible.

In the case of «Jacob Jarowslowsky vs. Mexico,» no. 896, the Umpire said: «The claimant might also have sought and obtained evidence *that a Mexican force was actually at the place and at the time stated, and that it seized the goods, facts which must have been notorious; but from May 1865, the date of the seizure of his property, till March 1870, he does not seem to have made the slightest effort to collect evidence.*»

Which is then, in Weil's case, the evidence that there actually was a Mexican force at the place where the cotton was seized, a fact that ought to have been notorious?

The omission begins by not designating such place, and it is absolute as to the existence of any force in it.

In Jarowslowsky's case, the fact was supposed to have occurred in May 1865, and it was not until March 1870 that any attempt was ever made to prove it.

In Weil's the fact is supposed to have occurred in May 1865, and the first attempt at any proof was on the 15th of

December 1869. Three months short of five years in the first case: three months *over* five years in the latter.

And what has been the evidence produced in one case and the other?

In the case of Jarowlowsky a witness, Cohen, declares to have intervened in preparing the transportation of the merchandize to the interior of Mexico, giving the number of mules, waggons &c., &c. forming the train, describing the road over which it went and the exact spot at which it is pretended the seizure was made. at ten miles from the Rio Alamo.

Another witness Wolf, *who was the conductor of the train* related also the same details, adding that the force who made the seizure was under the immediate command of a Colonel, and some other officers.

Two other witnesses who said they were drivers on the train Rodriguez and Stevens, also gave details of the event as if they had really witnessed it.

Nevertheless, this late and suspicious proof, with great propriety, was never considered as sufficient.

We read in the decision:

«Two witnesses, wolf and Cohen, and subsequently two others, Dominguez and Stevens allege that the goods and train were seized by Mexican troops between Mier and the Alamo river; but the evidence that these troops *really belonged to the Mexican army* does not seem to the Umpire to be sufficient.»

In Weil's case we only have three witnesses who present themselves as eye witnesses of the alleged capture of the cotton.

Mc. Martin who does not say wherefrom the train did start, where did it cross the river, what road did it follow, at what precise point was it seized; and only mentions as the immediate commander of the capturing force, General Cortina, who could not have witnessed the seizure.

Justice, who does not state either those essential details; and Shackelford, who pretends that the train composed of 190 wag-gons had ran a distance of about seven hundred or more miles, from the 1st of Septepber 1864, up to the date of the seizure, between the 10th and the 25th of said month and year.

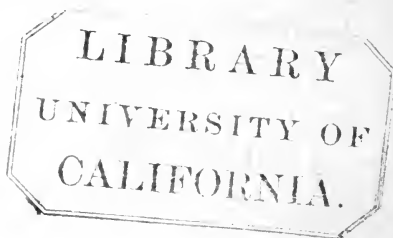
He of course, does not describe the road so swiftly made by the train.

This evidence was produced on the following dates:

Mc Martin's deposition—July 26^{ht}—1872. Justice's.—
Feb. 7th, 1870. Shackelford's deposition—March 12th, 1872.

Can it be said that such evidence was more seasonable and satisfactory than that filed in Jarowlowsky's case?

Quite the reverse: as for as the number of the so called eye-witnesses, and the details of their respective declarations, and the time when they were produced are concerned, we find every advantage on the part of Jarowslowsky's case; and nevertheless, his evidence could not deserve any consideration, and very justly, it did not obtain any.

F.


Let us now examine the last point on which, satisfactory evidence should have been produced.

What are the steps claimant took to prove in due time the fact of the seizure of his property, to obtain vouchers for it and to ask for compensation?

We find no data whatever on these points in the file.

In the memorial signed by John J. Key, who styles himself attorney for claimant without pretending even to prove his representation, it was said on the 25th of April 1870—paper no. 11—that he had often asked compensation of his losses *from all the Mexican authorities he was able to approach*.

But neither in that paper nor in any other of the file is a single one of those authorities designed.

In the first statement of the case, filed by Weil—paper no. 4—he said he had *often* solicited the release of his property; but could never obtain any satisfaction. And following immediately after those words, we read:

«I have *never*, laid my claim, before either the United States or the Mexican Governments, asking payment thereof.»

In the said case of Jarowslowsky, the decision begins by saying:

«The Umpire observes some very remarkable circumstances. The claimant although he alleges that he suffered great losses by the acts of the Mexican officers which were committed in May 1864, never made any representation upon the subject to his own, or to the Mexican Governments for nearly five years afterwards.»

In Weil's case it is said that he suffered a loss even greater than Jarowslowsky's on the 20th of September 1864, and it was not until September 10th 1869, that for the first time a vague complaint was presented, five years minus ten days after the occurrence.

The only witness who speaks of the *demarches* of claimant to have his property restored to him, is Shackelford, and he does it in these words:

«That claimant *personally* and through his agents and attorneys requested the cotton be restored to him, and this was re-

fused; but he was told that the Government of the United States of Mexico was good for the cotton, or its value.»

Even admitting that some weight should be attached to the *dictum* of this witness, is there any precision in it with regard to the point under investigation?

Where and to whom did Weil make personally the application Shackelford speaks of?

Did he, by chance, witness the seizure? It seems not if Hite, who gives as his place of residence the city of Matamoros, is to be believed.

Weil himself has not condescended to say, in the only paper emanating from him,—the statement bearing date of September 10th, 1869,—where was he the day of the seizure of his cotton, although, if we are to understand literally his vague statement, he was present when the occurrence took place.

«My property,» he says, «was taken *from* me.» On this point therefore, as on many others, we cannot help either disbelieving Hite, or disbelieving Shackelford, as their so called testimonies seem to conflict with each other.

In regard to the *demarches* of Weil's agents or attorneys, we want to know, who were those agents?

The only individual who comes to invest himself with this character so late as March, 1872, and who in December 1869 had forgotten his investiture, says that he preserved it up to May 1864, a short time after he had made the purchases and shipped the cotton at Allaton.

Outside of this, even Hite does not say that he ever took any step to claim Weil's property.

In regard to proofs, we have repeatedly remarked that none at all were procured until December 15th, 1869.

From this date forward, not a single document has been presented bearing on the fact under investigation.

The proofs consist in simple affidavits or testimonies received at long distances from the places where the facts occurred, but not one from those who sold the cotton, from the owners or drivers of the waggons on which the cotton was transported, or from merchants residing at the places through which the train passed. Nothing, as Mr. Wadsworth said in the case of J. Ford, nothing else but *Hite* and always *Hite*.

In the so often cited case of Jarowslowsky, it was alleged that the officer or commander of the troops who made the seizure, issued a receipt; but that it was stolen in Texas with all the papers relating to the waggons, mules &c. by stragglers of the Confederate troops of that State.

The Umpire said:

«But the absence of proofs which might have been obtained is still more remarkable. If Wolf had been robbed of the receipts for the export duty paid at Matamoros and for the value of the waggons, mules, &c., he could easily have procured duplicates on his return to Matamoros.»

In the present case there is something still more remarkable. It is pretended that the train did not pass by any custom house of Mexico, and should this be true, it would of itself justify the confiscation of the cotton, as has been shown; it is also pretended that there were no *written vouchers* in any of the transactions relating to the purchase of cotton, purchase or charter of *not less than 190* waggons and their corresponding number of mules, &c.; but only a *simple memorandum* kept by Hite, who was lucky enough to go to Texas some time after the event, there to be, in his turn, despoiled, by stragglers also, of his memorandum; but not a word is said about the receipt for the cotton, signed by the commander or officer who made the seizure.

In the decision of the case of «Charles H. Britell vs. Mexico,» no. 905, the Umpire said:

«It seems most extraordinary that in this, as in the case of Henry C. Boyd, the claimants should *neither have taken nor even asked for*, as it would appear, *any receipts* for the property, such as mules, horses, waggons, &c., which was alleged to have been *taken from them.*»

With these decisions in view the undersigned feels fully authorized to state with perfect security, that in Weil's case, like in the cases of Jarowslowsky, of Brittell, and of Boyd, the absence of *all documentary evidence* on such points as the interested party could have collected it, is inexcusable, and that even admitting that it was lost, Weil *could and should* have replaced it *in due time*.

The undersigned can only attribute, therefore, the decision given in Weil's case, to an involuntary misapprehension of its circumstances.

We read in said decision :

«These facts are not disproved by evidence on the part of the defense.»

Neither did the defense file any rebutting evidence in Jarowslowsky's case.

In Weil's case, the undersigned did offer it, and special mention is made of this circumstance in his argument before the Umpire.

But leaving this aside, it was shwon in the same argument that the facts, ground of the claim, had not been proved, and it is a principle of eternal justice, always prevailing in the rectitude of the Umpire's judgment, that when claimant's proofs are insufficient, the defendant cannot be condemned, even should he show nothing on his part.

«Actore non probante, reus etiamsi nihil præstiterit, absolvitur.»

But there is a circumstance that shows to the undersigned that his said argument, did not deserve the Umpire's full attention.

After the words just quoted, we read the following in the decision :

«The argument of most weight which has been suggested by the latter—the defense—is that all communication with points occupied by the enemy was forbidden.»

In the undersigned's argument no great weight was attached to such a suggestion. Mr. Cushing, the first Agent of Mexico, had made it, being undoubtedly under the impression that portions of the States of Coahuila, Nuevo-Leon and Tamaulipas were in the hands of the invading forces and their allies, at the time the occurrence we are referring to, took place. And it was actually so.

Saltillo, Monterey and Ciudad Victoria, the capitals of those States were occupied by the French or the Imperialist, and the Boca del Rio or Bagdad, had been occupied since the 22^d of August, 1864.

But the undersigned did not consider the question at issue from this standpoint. His efforts were directed to show that claimant's proofs were less than insufficient, and more than suspicious.

Under this impression he did not think it necessary to give to the legal point of the case, all the development that it might have received, had the facts been satisfactorily proved.

The undersigned remarked however, that all the witnesses in the claim testified that the cotton had not been introduced through any custom house into Mexican territory and, therefore, the act was not lawful on the part of Weil in regard to Mexico; nor was it lawful in regard to the United States the fact of taking a cargo from territory occupied by the Southern rebels.

The commissioner of the United States deciding the case of Geo. B. Cochran vs. Mexico, no. 865 said:

«He complains that General Cortina did not allow him to pass into Texas from Matamoros, with a large mule train loaded with goods.»

«This was in *August 1864*—in July 1864 the U. S. troops withdrew from Brownsville and left *the whole State* to the confederates, except the port of Brazos Santiago, where a small force was left.»

«The restraint, then, put on claimant's trade with the rebel territory of the U. S. *was not an injury for which the Government of that country can claim here.* It was a friendly and beneficial act to the U. S. to stop all trades with Texas, only carried in violation of the laws of the United States and the proclamation of the President. It was *one good deed done by Cortina.*»

It strikes the undersigned that in Weil's case the same reason prevails for not admitting the claim set forth by the Government of the United States, and on this ground alone, it might be dismissed.

But above all, since the fact on which it is based has been considered as proved, it is absolutely impossible to overlook the palpable, the confessed violation of the fiscal laws of Mexico, a fact of itself impugning the justification of the act claimed.

It is shown that even admitting that the facts occurred just as the witnesses of the claim state them, viz: introducing the cotton in question into Mexican territory without due knowledge of the corresponding custom-house officers, without fulfilling the requirements of the law and paying the custom duties established by tariff; cargo should be confiscated and a total loss to its owner.

Neither claimant nor his witnesses have said why was the cotton seized; and, nevertheless, it was for claimant the interest

ed party, to find it out and to enforce all his rights before the proper authorities and in due form of law.

The Umpire has declared it so in the following words of his decision in the case of Wilkinson and Montgomery, no. 105.

«The Umpire considers it *quite unjustifiable* on the part of Wilkinson and Montgomery's agent that *immediately after the seizure of the merchandize* he should have abandoned it and should not even have taken the trouble to inquire on what ground the seizure was made or of what cause the goods were subsequently confiscated. There seems, likewise, to have been great negligence *in not applying to the superior authorities*, as, for instance, to the Minister of finance, demanding an investigation.»

It truly goes beyond the limits of credibility that a man should suffer a spoliation of over three hundred thousand dollars without taking any steps whatever to know, at least, the cause of such a proceeding.

Was it a penal confiscation? The party interested should, then, have used his rights, if he did not consider it authorized by law.

Was it an expropriation for public use? He ought to have applied for some voucher at least, and, in case of denial by the authorities, to have procured some subsidiary proof.

The undersigned will refer again to the Umpire's decision in Jarowslowsky's case:

«But even—he says—if it be true that the goods of the claimant were seized by Mexican troops, the Umpire considers that the Mexican authorities had,—by the general laws of war, as well by the Mexican law, of August 16, 1863—*the right to confiscate them. If the claimant thought that the seizure was illegal, it was for him to present his claim to the Mexican Government, as he certainly might have done, in accordance with the law of November, 19, 1867.*»

In order that this part of the decision should suit exactly Weil's case, we need only to change the legal ground, and instead of the *general laws of war*, and the *Mexican law* of August 16th 1863, cite «the *universal fiscal law* and the *Mexican law* of January 31st 1856»

Can it be said that a seizure made in virtue of accidental supervening circumstances, and of the general laws of war, is more justifiable than a seizure emanating from fiscal laws of a permanent character, the knowledge and observation of which was binding on complainant?

«The citizens of the two countries respectively» says article III, of the treaty between Mexico and the United States, «shall have liberty... .. to come with their cargoes to such places, ports and rivers of the United States of America and of the United Mexican States *to which other foreigners are permitted to come,*» that is, to places opened to foreign trade..... «but *subject always to the laws, usages and statutes* of the two countries respectively.»

The undersigned has had an opportunity to see the argument of counsel for claimant before the Umpire, and he deems it proper to say a few words in regard to it.

It does not contain any analysis of the proofs of the claim, because its counsel well knew that, under analysis, those proofs could deserve no consideration whatever. Counsel do not even mention any other testimony but Hite's, taking good care not to make any allusion whatever to that of Shackelford, with which it is in open contradiction.

All their efforts are concentrated in the allegation, that no rebutting evidence was filed in due time.

Counsel say the Mexican Government knew of the claim since March the 8, 1870; and that is incorrect, as it was not until the 8th of October of that year that the case was entered on the docket—paper no. 14—and from that date the time to put in rebuttal was to be counted.

Up to that date, the proofs filed to base the claim were of such a nature that they required no defensive evidence, as they did not contain any precise data in regard to the circumstances of the case. This is the reason why after the time for filing evidence on claimant's part had expired, and it was so declared at his own petition, he still kept filing other proofs up to June 27th, 1873 paper no. 26.

If claimant, therefore, took so much time to complete his evidence, a delay in sending the defensive evidence, ought not to be considered strange; especially when the Mexican Government has explained said delay, stating that at the time the investigation was promoted, there was no competent Judge *ni Matamoros* to do it.

But even admitting that the delay was culpable, is it just that the penalty should be the declaration that the claim is proved, when it is not?

Certainly not. If the proofs are not sufficient to convince the mind of the truth of the fact they relate to, it matters little their not having been refuted.

Besides, there are in claimant's argument the following assertions on points of fact which show the very foundation of the claim to be false:

1.—That the seizure was made by Cortina. «The train and cotton was seized by Cortina» pag. 4.

2.—That the train crossed to Mexican territory at 160 miles from Brownsville.

3.—That Weil, after finishing his arrangement in Allaton, left por Matamoros leaving an agent there.—Page 5.

5.—That the country was in a state of commotion on account of the war, Ibid.

6.—That claimant, being a subject of the *de facto* government of the Confederacy, could not have applied for protection to the government of the United States.

7.—That he could neither apply to the Mexican authorities, because at the time of the occurrence they did not exist.

The following conclusions are then drawn:

1.—That the cotton belonged to Weil.

It would have been necessary first to show that such cotton *had really existed*.

2.—That Weil's trade was not unlawful nor in violation of the law of Mexico.

It has already been shown that it was.

3.—That admitting it to be so, the seizure ought to have been put on trial.

Supposing it possible, bearing in mind the state of commotion of the country, as described by the allegators; it was for Weil, or his agents to promote the trial.

4.—That there is no law in Mexico authorizing the army officers to take private property.

Therefore, if those who made the seizure had no authorization, the Mexican Government is not responsible for it, and said officers committed a crime for which claimant might have pursued them criminally.

5.—That the facts of the seizure and expropriation are conclusively proved by unobjectionable testimonies.

The undersigned has proved the impossibility of those facts.

What is phisically impossible, cannot be *conclusively* proved.

6.—That the convention of July 4th, 1868, released the Americans from the obligation of using the remedy granted to them by the Mexican law of November 19th 1867, and if their claims are not attended now by the Commission, they could never be presented afterwards to the Mexican Government.

The first part of this assertion is incorrect, because the convention only submitted to arbitration claims for *injuries*; and when the injuries can *only* consist in the circumstance that certain complaints were not attended to, when the acts which gave rise to them were entirely unknown to the Mexican Government and are moreover justifiable by law, as it happens in Weil's case in which the regulations of the Maritime and frontier custom-houses were clearly violated; the convention, far from dispensing with the application of the remedy alluded to, has made it indispensable in order that the claim might be attended.

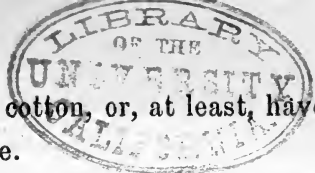
As to the second part of the assertion, it is true, but then claimant would well deserve the penalty, for his incredible neglect.

As an excuse for this neglect, it is said that there was no authority to whom claimant might present his complaint; but this is notoriously false.

It is said that claimant was in Matamoros when the report reached there of the seizure of his cotton.

We have already seen that it could not have been Cortina who made the capture; but even admitting that he was the captor, Cortina and all his forces surrendered to the Empire in September 26th 1864. It is not to be believed that at this day Weil's cotton should have entirely disappeared.

To no-body better than to the imperialist General Mejia, for whose Government the Southern Confederacy professed very warm sympathies, could Weil have presented his complaint. He would



then, either have recovered all his cotton, or, at least, have left some written evidence of its seizure.

But supposing that he was unable to accomplish this in Matamoros for some reason or other, which the undersigned cannot imagine even, in view of the position in which Cortina was placed from that date, Weil could, with perfect security, have produced his proofs in Brownsville, opposite Matamoros. Why didn't he do it so? Why has'n't he produced any written document whatever of that time?

Counsel for claimant say that documents only constitute a complementary evidence: that the principal evidence consists in the affidavits of witnesses, produced here and there, many years after the event took place.

The undersigned's opinion, and if he is not mistaken, the Umpire's also, go the other way.

It is not as easy to forge a document of eight or ten years date, as it is to obtain one or more affidavits; or rather, that is impossible, this, exceedingly facile.

It is stated in the brief that the U. S. Court of claims awarded one million of dollars to a house in Liverpool for cotton seized during the war by American authorities, when the evidence *in chief* of the ownership of the cotton, consisted in the testimony of one witness *and his acts*; if this is so, the undersigned will say that testimony, and the other less principal proofs might have been of such a character, as to have been deemed sufficient by said Court, and that it does not appear, nor is it alleged that there were no documentary evidence at all in the case.

But leaving this aside, said Court is bound to take that kind of proofs into consideration, however suspicious they may appear to it; whilst this Commission, in point of proofs, is only obliged to follow common sense.

The system of proofs to which said Court must submit itself

has been found so deficient, that the President of the United States in his last message to Congress, said:

«It is to devise some better method of verifying claims against the Government than at present exist through the court of claims growing out of the late war. Nothing is more certain than that a very large percentage of the amounts passed and paid, are either wholly fraudulent or are far in excess of the real losses sustained.

«The large amount of losses proven—on *good testimony according to existing laws, by affidavits of fictitious and unscrupulous persons*—to have been sustained on small farms and plantations are not only far beyond the possible yield of those places for any one year, but, as every one knows who have had experience in tilling the soil, and who has visited the scenes of these spoliations, are in many instances more than the individual claimants were never worth including their personal and real estate.» Message of the President of the U. S. to Congress.—December 7th 1875.

To few witnesses could the epithet of *unscrupulous* be better applied than to Geo: S. Hite and to Shackelford, whose testimonies are the main pillars of this claim.

As the purpose of this argument is to show the motives that constitute a ground for the revision of the case, the undersigned believes to be sufficient what is heretofore witten, and to conclude he will respectfully invite the Umpire's attention to the following issue:

«1st *It is a physical impossibility* that the train should have crossed from American into Mexican territory a hundred and sixty miles above Brownsville, bound to Matamoros, and that ten or more days later, it should have been captured at a place between Piedras Negras and Laredo.

2^d *It is likewise a physical impossibility* that the seizure should have been made by General Cortina, who was in Matamoros.

3^d Admitting as true the confiscation and total loss of the cotton, it would have been justifiable according to the Mexican law, in view of the circumstances of the case.

4th If claimant believed he had any right to enforce, he should have deducted it before the superior authorities and would he be entitled to compensation, he ought to have claimed it from the Mexican Government.

The undersigned hopes the Hon. Umpire will examine these points and the others he touches in this argument, and will reconsider the case.

Its importance renders this further labor of the Umpire indispensable, as if, at any time hereafter, he should be convinced that through error, he had imposed such a heavy burden on the meagre Mexican Treasury, induced by the technical allegations and the fallacious proofs of the parties interested in the claim, he would undoubtedly lament it exceedingly.

Can there be any reason why an involuntary error should not be corrected when it is still time to do it?

Can it be possible, that even in case the Umpire should be convinced that no cotton was ever seized from Weil by Mexican authorities; or, admitting it had been seized, that the seizure was wholly justifiable by law. he should still refuse to modify his decision.

The Agent of Mexico cannot believe that the Umpire should act so, when, as it has been said at the beginning, he follows no other rules in his decisions than justice, equity and the principles of public law, and when recall's the case in which the Umpire believing that he had incurred in error in point of law, had no difficulty in rectifying his decision at the request of the Agent of the United States.

The Mexican Government renders due tribute of justice to the impartiality and good faith displayed by the Umpire, and with this foundation, he hopes that the Umpire will weigh the reasons he has set forth requesting that the decision in this case be revoked.

If after taking them into consideration, if after a re-examination of all the circumstances of the act claimed, the Umpire should still believe just that Mexico should pay nearly half a million of dollars involved in this case, be whatever the sacrifice that the payment may entail, the Government of Mexico and its Agent, will at least have right to expect that those who are posted with the case, especially in Mexico will do justice to the efforts used to obtain it

(Signed.)

ELEUTERIO AVILA.

Decisions of the Umpire in three cases similar to that of Weil.

Hugh Lewis vs. Mexico, no. 653.

In the case of Hugh Lewis vs. Mexico, no. 653, the Umpire is of opinion that there is not sufficient evidence to justify an award in favor of the claimant. It is alleged that on a certain day 25 bales of cotton were seized by troops *under the command of General Cortina, at a place near Reynosa* in the State of Tamaulipas, Mexico. To these facts there are only two witnesses. John Delworth declares that *at the time of the occurrence he resided* in Gonzalez County, Texas, which must be about 250 miles from Reynosa, so that though he declares that he knew the facts to which he deposes he can have done so only by hearsay and not for personal acquaintance with them. The Umpire cannot admit the validity of such evidence.

There remains, then, but one witness, W^m F. Laird. His testimony however is extremely vague. He states that on June 18, 1865 *the Mexican liberal forces under the command of General*

Cortina, at a place near Reynosa forcibly seized and took possession of the cotton in question. He does not say whether Cortina or any other officer was actually present at the seizure, nor does he give the name of the place or its distance from Reynosa. The witness adds that he paid duties on the cotton on entering the Mexican territory at Reynosa, and received permits which he has mislaid; but no attempt seems to have been made to prove by the Custom House records that these duties were so paid or to obtain duplicates of the permits. Nor does any protest appear to have been made at the time against the alleged act of the Mexican troops.

Upon such evidence given by this solitary witness the Umpire does not consider that the Mexican Government can be condemned to compensate the claimant, and he, therefore, awards that the claim be dismissed.—Edward Thornton—Washington, Feb. 2, 1876.

In the case of William F. Laird vs. Mexico, no. 994 the Umpire is of opinion that the proofs in support of the claim are not sufficient to justify him in holding the Mexican Government responsible for the losses alleged to have been suffered. *It seems to him that it would have been easy, if the claim be well founded to have furnished proofs which would have been much more satisfactory.* The cotton was imported into Mexico at Reynosa and it is said to have paid duties there. It must surely have been easy to have obtained from the Custom House at that place

a record of the transaction or to prove that it was impossible to obtain it. In the memorial of Laird and Mathin vs. Mexico no. 995, which is connected with this claim, it is stated that the property was seized by *a portion of the military forces under General Cortina. It must, therefore be inferred that General Cortina was not there himself at the time, nor is it stated who was the officer in command by whose order the acts complained of were committed or whether there was any official at all. It is incredible that so large a sum of money as \$15000 should have been paid to General Cortina or to any of his officer, without a receipt being obtained for it. Nor it is to be believed that the claimant on his arrival at Matamoros should not have laid his complaint before the United States consul at that port.*

It is further to be observed that the memorial is not signed by the claimant himself but by his attorney who naturally cannot swear of his own knowledge that the facts stated in it are true.

In view of the insufficiency of proofs the Umpire awards that the abovementioned claim be dismissed. Washington, August 1, 1876.

Edw. Thornton.

In the case of William F. Laird and John Mc. Mathi vs. Mexico, no. 995, which connected with that of William F. Laird vs. Mexico, no. 994, the Umpire refers to the observations made in his decision in the latter case as applicable to the former.

It is further to be noted in the present case that it is stated that the train of wagons, mules, &c., was sold at Matamoros. *Proof of his sale might certainly have been furnished by the purchasers. Yet none is produced.*

The Umpire, for this, and the reasons given in his decision on no. 994 awards that the abovementioned claim be dismissed. Washington, August 1, 1876.

Edward Thornton.

BENJAMIN WEIL.

vs. Mexico

Number 447

Additional remarks to the argument on rehearing.

On the 29th of January of this year, the undersigned filed an argument,—the perusal of which he most earnestly recommend to the Umpire,—in which it is shown that by the very papers of the file, it appears that the fact, ground of the claim, is a physical impossibility, and that, even admitting it to have occurred as related, the confiscation of the cotton in question would have been justifiable.

After having filed said argument, the Umpire has dismissed three cases very similar to Weil's claim, on grounds exactly applicable to it.

In the case of Hugh Lewis, no. 653, it was alleged that on June 18th 1865, some troops under command of General Cortina seized 25 bales of cotton near Reynosa, in the State of Tamaulipas, Mexico.

But the evidence was exceedingly vague, as it did not determine *whether Cortina or some other officer* had been present to

the seizure; it did not state *the name of the place* where said seizure was made, nor express *its distance from Reynosa*.

This is exactly our case: no other circumstances of the capturing force are given but that they *belonged to the troops under the command of General Cortina*—«under General Cortina,»—and as to the place of the capture, it has only been said that it was *between Piedras Negras and Laredo, without stating at what distance from these places*. In the case of Lewis it was alleged that *duties had been paid* at Reynosa, in order to introduce the cotton, but that the permits had been lost. The decision *did not consider* this excuse enough to dispense with the presentation of *documentary evidence*, duplicates of which should have been procured.

In Weil's case, it is averred that the cotton had been introduced into Mexican territory *as contraband*; that is, *without touching at any custom-house, and without procuring any fiscal documents*. Is this default more excusable, by chance, than the presentation of custom-house permits?

It was also remarked in the decision of the case of Lewis, that *it did not appear that any protest had been filed against the alleged act of the Mexican troops, at the time it occurred*.

The same remark applies in Weil's case.

In the case of William F. Laird no. 994, the subject matter was likewise seizure of cotton, attributed to forces «under Cortina.»

The decision reads:

«It is related that the cotton was seized by a party of the military forces «under the command of General Cortina.» «It must, therefore, be inferred, that General Cortina was not present at the act of seizure, and it is not stated who was the officer in command of the capturing force, or by whose order the act claimed was executed,»

«It is incredible that the large sum of \$ 15,000 should have

been paid to General Cortina, or to any of his officers, without obtaining a receipt for it, and, notwithstanding, no receipt has been filed.»

In Weil's case, the value of the property said to have been seized, amounts, if we believe claimant, to *over \$300,000*; more than *twenty times \$15,000*. And still, *no receipt either* has been filed.

The decision in Laird's case, says moreover: *«It cannot be believed that claimant on arriving at Matamoros should not have presented his complaint to the United States Consul at that port.»*

Neither did Weil ever file, before presenting his claim here, *any complaint or protest whatever*, in regard to the seizure of his immense cargo of cotton.

In the decision of the case of W. F. Laird and Jno. M. Mathis, connected with the one just cited, besides reference being made to the remarks heretofore quoted, another is added, *viz: that no proof had been produced of a sale alleged to have been made in Matamoros*, when that proof might certainly have been furnished *by the purchasers*.

In Weil's case, it is pretended that not less than 1,914 bales of cotton had been purchased in Alleyton, and no proof whatever has ever been filed of such an important transaction when it might have been furnished by the vendors.

On the very same ground, therefore, by which the abovementioned claims were dismissed, the decision given, in a reverse way, in Weil's case, should now be revoked, rectifying the appreciation of the weight of the proofs filed by the interested party.

But the fact foundation of the claim, is not any more *only* doubtful or improbable.

The Government of Mexico presents the fullest evidence that it is entirely false, and that the claim is the most stupendous and escandalous fraud ever attempted before this Commission.

That evidence—found after the decision had been given—consist in the authentic statement, written and signed by Benjamin Weil himself, of all his affairs and transactions from the surrender of New Orleans up to the month of October, 1864; in seventy three original letters from Weil, among which are two dated at Opelousas, the 29th of August 1864; one dated at Alexandria, La. the 5th of September of the same year; one dated at Shreveport, on the 10th of the same month; one at the same place on the 20th of September, 1864, the very day on which, it is alleged, his cotton was seized *from him*, between Laredo and Piedras Negras; one dated also at Shreveport on the 22th of September; one on the 23^d of the same; one, on the 24th of October, also at Shreveport; two others on the 5th of December at Brownsville; one on the 8th of the same month; one on the 12th; one on the 19th and one on the 26th.

In none of these letters and in none of many others, written before and after, does Weil make any allusion whatever to this seizure, notwithstanding that he relates very minutely all his affairs.

Benjamin Weil, being then in mercantile partnership with Messrs. Isaac Levy, Max. Levy and Jacob Levy, under the mercantile style of «Isaac Levy & Co.» entered into, at Opelousas, on the 11th of March, 1863, an agreement with the house of «Bloch Firnberg & Co.» forming a new partnership for all kinds of business transactions, under the style of «Levy Bloch & Co.»

The clauses of their contract were the following: all profits and losses were to be divided by halves, and any transaction business made by a member of the firm, at any time or place,

during the existence of the partnership, should be for the benefit of the partnership.

The partnership was dissolved on the 15th of November, 1865, and the corresponding declaration was duly solemnized on the 19th of the ensuing December, without any allusion being made of the pretended loss that has given rise to Weil's claim.

The undersigned presents authenticated copies of the deed of partnership and also of its dissolution.

On the 16th of September, 1863, Max. Levy granted a power of Attorney to S. E. Loeb, to act as Agent in the execution of a contract made by said Levy and Benjamin Weil with the Governor of the State of Louisiana, to import arms and ammunition and to export cotton; giving him the commission to ship to Mexico, or to any other foreign country, the cotton he would receive, and authorizing him to sign all the documents in the name of Levy and Weil.

The undersigned presents the original of this power of Attorney.

Many of Weil's letters already mentioned, and letters of the following persons: Max. Levy, Governors More and Allen, of Louisiana; Emory Clapp, Agent of said state; Isaac Levy, J. C. Baldwin, of Alleyton; Bloch; Matt. Barrett, and, in a word, all the original correspondence relating to said contract, and to all the affairs of Weil, is presented by the undersigned; and this correspondence shows that *not a single bale of cotton* belonging to Weil, or to Weil and Levy, or to «Levy Boch & Co.» *was ever seized on Mexican soil, though a small amount of cotton was seized on American territory, by order, of a Confederate General.*

On the 15th of September, 1864, Benjamin Weil filed a petition at Shreveport with General E. Kirby Smith, stating that on the 7th of January, 1863, he—Weil—had been appointed with his partner Max. Levy, Agents of the State of Louisiana for

the exportation of cotton, and the purchasing of stores with the proceeds of its sales; that he, as such Agent, bought *fifty bales* of cotton in Freestone, Texas, and paid its freight, up to Brownsville, at the rate of 11 cents per pound, and that by order of General Bee, Military commander of the Rio Grande, it had been seized at Brownsville and *ten bales* retained notwithstanding that he had shown the order authorizing the export of the cotton belonging to the State of Louisiana. Weil asked that he should be compensated of said ten bales of cotton by as many others, placed in Brownsville.

He also stated, that on the 18th of November, 1863. S. E. Loeb, had sent him from Alleyton, Texas, *83 bales of cotton*; that the cotton was detained—on account of disease of the animals hauling the train—at a point 10 miles distant from San Antonio, and there Colonel Hutchins had seized half of the cotton. He asked that he should be compensated for said 37 bales of cotton so seized. The undersigned also presents this original petition with the report and decision passed on it.

The matter it refers to was the topic of several of Weil's letters dated in September, 1864, in which it is mentioned as *his most important*, it not his only business.

In a letter, dated September 20th 1864, he said to S. E. Loeb he had heard that his partner Jenny was in trouble on account of a schooner, but that he—Weil—would not help him, as the other matter pending before General Smith was of more importance since the Governor had promised him that he should be compensated for the bales of cotton the seizure of which constituted his claim, as soon as the cotton office of Texas should deliver to Louisiana a thousand bales belonging to this State. He also said that General Smith took some interest in his case because he was very anxious to get him into Mexico.

There is not a single word in this letter, nor in any of the

others written both before and after, relating to any cotton he expected by Piedras Negras, nor any other place on the Mexican territory.

Those letters prove moreover, that from May to December, 1864, *Weil never was in Matamoros*, where some of his witnesses pretended that he resided, nor on the road from Alleyton to Matamoros; but that he was in Houston, Opelousas, Alexandria and Shreveport, and not until the end of November, in Brownsville.

They also prove that Weil was far from being a merchant doing business on a large scale, as his witnesses pretend, since on May 18th, 1864, he wrote to Mr. Loeb: «I am not able to send you any goods, as *the credit is dead and money I have none.*»

As to the authenticity of Weil's letters it is proved by respectable witnesses, and should any doubt be cast upon them, it could be dispelled by simply comparing the signatures of those letters, with Weil's signature found in the file.

The statement of Benjamin Weil's transactions which is mentioned above, reads as follows:

«Statement of my proceedings since the fall of New Orleans. —In August 1862 Gov. Moore proposed to me to load the Schooner Washington, then a prize and anchored at Lake Charles, I went to work, got the cotton and transportation, but before the cotton reached the lake, the yankees came with a fleet and destroyed the schooner partly. I had to give up this expedition, was naturally in for all expenses.—I next took an interest in the schooner Lehman which sailed from Lake Charles in March, 1863; the vessel landed in Tampico. the supercargo after taking advances on the cotton, handed her over to another man whom he appointed supercargo, on the Lehman, and himself went with the whole of cotton to England and never returned. The new supercargo after taking in a cargo at

the mouth of the Rio Grande, ran into Galveston and disposed of the cargo, and I have never been able to collect one dollar.—About the same time I took an interest in the schooner «Ceciliad.» She also ran into Tampico, sold her cargo, inverted the whole amount it medicines, and cotton cards; but was unfortunately captured on her trip in and sold in New Orleans as a prize.—Loaded about the same time a small schooner in Permenton river, but up to date never heard spoken of—no body knows what became of her.—I started for Mexico, and as quick as there, *invested all my ready cash in the schooner Star*, loaded her with ordnance stores, started her of with Mr. Levy, my partner, as supercargo. She made the trip safe in and out; but on her trip back, she was chased by the yankees, and Mr. Levy set her a fire within a mile of Brazos; she was loaded with powder, shot, percussion caps, spades, axes, &c.—We are interested in the schooners «Hyer and Gibberson,» bath came in January last, loaded with ammunitions of war and ordnance stores, but up to this day have never been able to get out.—After the schooner Star had left the port of Matamoros. *I remained expecting 50 bales of cotton, the proceeds of which I intended to use as travelling expenses to go to Europe.* My credit in Europe would have enabled me to purchase any amount of goods for the State of Louisiana. *These fifty bales of cotton were first seized, forty afterwards released and I obliged to sell at the low prices of the Matamoros market, say at 17 cents per lb. (*)* so that after paying freight, *I had nothing left worth speaking of.* Then I send to Mr. Loeb my (there is a spot of ink in this place, seemingly covering the words «agent in.») —Houston for more cotton, who late in the fall started 87 bales of cotton; the winter being very hard, the cattle died on

[*] The award puts the cotton pretended to have been seized—when far distant from Matamoros—at 30 cents per lb.

the road, while in the meanwhile *one colonel took one half of said cotton, and this expedition left me again in debt.* Last I got in with Mr. Jenny, encouraged him to jointly take in this stock and you know the remainder.—The schooner «Delfina» is still lying in Calcasien river and cannot tell whether she will get out.—I submit this statement to your examination. It wil prove you I have done all I could to forward the interest of the State.—Shereveport. La. October 13 1864.—B. Weil.—New Orleans, August 5th 1876.—I hereby certify that the foregoing is the handwriting and signature of B. Weil. I have seen him write and sign his name very often during the period to which this memorandum relates, say *from May 1862*, as well as afterwards until May 1865.—E. W. Walsey, late private secretary to Governor L. O. Moore and to Governor W. Allen.—Sworn to and subscribed before me this 5 day of August, 1876.—Th. Buissen, Notory public.»

The undersigned believes that this statement alone, of undoubtable authenticity is enough to put in a clear light the fraudulency of the claim.

But he presents in addition a large number of letters from persons connected in business with Weil at the time, *viz:*

17 letters of Isaac Levy, dated in 1864 and 1865, all on business, containing intelligence, intructions &c. in regard to affairs in Louisiana, Texas and Mexico, *and no reference is ever made in them to any large amount of coiton in Alleyton*, nor to any loss by capture of cotton *by Mexican authorities.*

Letters of Matt. Barrett, dated at Eagle Lake, Texas, as to the hire of animals, &c. This place is not far distant from Alleyton.

Letters of J. C. Baldwin & Co. of Alleyton, Texas, the consignee and Agents of Benjamin Weil in said place, written on different dates of 1864 and 1865. They contain accounts, ack-

nowlegment of receipts of letters, &c.; they refer to the shipment of cotton; its current prices are quoted; the remittance of some goods is asked for, with urgency, &c., without making the slightest allusion to the 1900 bales of cotton. In the letter of *January 30*, 1865, acknowledgment is made of one delivered by Geo. D. Hite, promising to help him in his undertaking; and this letter shows that *this was Hite's first visit to Alleyton*.

Letters of Max: Levy of 1864, some dated at Houston, and others at Matamoros. In the former, dated in February, he speaks of vessels loaded with cotton, ready to sail. In his letter of July 31st dated in Matamoros, not a word is said about the 1900 bales of cotton that ought to have been then on their way, as alleged in the claim. In the letters of 6 and 10— of October, Weil, Loeb and Bloch are spoken of; and no mention is made of the capture of the cotton, which is alleged was made a few days before.

Letters of Joseph Bloch of 1864 and 1865. In one bearing date of January 19th 1864, it is thought strange that Weil should be in Matamoros when he ought to be in Paris, and the query is propounded:—«Is this the Paris to which he went?» In a letter dated February 1864 the wish is expressed that Weil should leave Matamoros, where he was *doing nothing*. In another dated Shreveport, July 9th of the same year, Bloch says he saw Weil at that place, and speaking of cotton transactions, not the least reference is made to any load proceeding from Alleyton.

Letters of Gustave Jenny of 1864 and 1865, dated at Galveston, Houston, Alleyton, Matamoros and Navasota. In the letter dated Houston, December 24th 1864, and addressed to Loeb, Jenny says that *Geo. D. Hite would probably go into the employ of Weil and Jenny*, and that *he would reach Houston about the middle of January 1865*.

The undersigned likewise presents sundry papers, receipts of loads of cotton and of other merchandize, which show all the transactions of the different partners of Benjamil Weil, and of the firm of which he was a member, and prove conclusively that *neither said firm, nor Weil individually ever had any large amount of cotton*, and that he never found himself in a pecuniary condition that would enable him to make large purchases of this article. All the cotton he ever received—and that in small amounts—were shipped immediately. Not the slightest mention is made of the one thousand, nine hundred bales of cotton proceeding from Alleyton: nor that *a single bale was ever captured by Mexican authorities or forces*.

The documentary nature of these proofs; their authenticity,—any doubt in regard to which can be dispelled by simply seeing them,—and the circumstance that the Government of Mexico was unable to obtain and present them before Weil's claim was decided; are, undoubtedly sufficient reasons for admitting them now, and for constituting them a ground for revoking the decision passed.

A Court of Equity, as this commission is, cannot refuse to reconsider the case, when additional evidence—*newly discovered*—is presented to it, especially when it is of a documentary character.

Besides the abovementioned proofs of this kind, the undersigned presents the following:

Deposition of S. E. Loeb given before Thomas Buisson, a notary in New Orleans. He gives the history of the partnership of which he was agent, and designates Benjamin Weil's partners: he speaks of their pecuniary condition, of the loads of cotton received, from whom, where were they sent to, &c. He specifies the date on which Geo: D. Hite entered the employ of Weil and Jeuny: he says, *Hite was never in the*

employ of any of them at any time during the year 1864: that the books, papers &c. of the several firms of which Weil was a partner are in existence to day and have never been destroyed. That he never heard of any capture of cotton by Mexican authorities or troops until late, when Weil's claim was published in the newspapers: that there never was 1,900 bales of cotton in Alleyton, Texas belonging to Weil: that Hite was not Weil's purchasing agent; that the books and papers of the firms referred to, must be in Opelousas, Louisiana &c. He speaks of the small amount of cotton the partners had in the spring and summer of 1864, and mentions the places where deposited: that satisfactory accounts were given of all of said cotton, and he adds that Weil owned no other property outside of the partnership.

Deposition of S. Firnberg, authorized by the same notary as the above. He was a partner of the firm «Bloch Firnberg & Co.,» which was consolidated with that «Isaac Levy and Co.» under the style of «Levy Bloch & Co.» composed of Isaac Levy Benjamin Weil, Matt. Levy and Jacob Levy. None of these partners ever did make business transactions on their individual account: *«I have never heard, he says, of any claim against the Government of Mexico, and well know that Weil's claim against that Government is fraudulent, At the time of the origin of said claim, I was Weil's partner, and was interested in all the transactions, and in the profits and losses, and remained so, until the dissolution of the partnership on the 19th of December 1865. I had access to the books and papers. The first time I ever heard of such a claim was through the public press.»*

Deposition of Louis Schreck, of August 5th, 1876—He was a partner of Gustave Jenny, and knows Benjamin Weil. He says that Jenny & Co. furnished Weil with goods in order that he might carry his contract with the State of Louisiana into effect. «I helped him, he adds, to deliver said goods to the agent of the

State of Louisiana, *in the summer of 1864*. I afterwards returned to Matamoras and was there at the latter part of said year. *I never heard that any cotton had been captured, and certainly would have heard of it, had it been true, and had the cotton belonged to Weil.* Weil had no resources of his own. All he could manage were facilitated to him by C. F. Jenny, whose power of Attorney I had. I recognize Gustave Jenny's letters that have been shown to me marked E. W. H. in red ink.» He also recognizes Benjamin Weil's letters.

Deposition of R. F. Briton to the effect that Geo. D. Hite, was in Government office in Shreveport *during all the year 1864*, without leaving that place not even for 30 days consecutively.

Deposition of B. L. Breut. He says Hite was in Shreveport, and that in the Spring of 1864, was captain of the steamboat «Countes,» after which he served under the order of Governor Allen, and was employed in the office of the Quarter Master of the State of Louisiana. «*I know he was in Shreveport*» he adds, «*during the months of August September and October 1864:* that he there went in business in partnership with one James Parsons, who was under the immediate command of colonel Wise. I know J. M. Martin, a pilot on the Colorado River, and consider him unworthy of credit. I also knew T. B. Shackelford, a Lieutenant in the Confederate army; he was a sort of a gambler, I do not know his whereabouts.»

Deposition of F. W. Halsey, private Secretary of Governors P. S. Moore and U. W. Allen, from 1860 to 1865. He know Weil and his partner Levy. He heard Weil had a contract with said Governors. By the frequent conversations he had with Weil, he heard that the capital was furnished by Gustave Jenny, or Jenny & Co. He never knew they ever had, at any time, more cotton than that furnished by said Governors. It was very difficult to obtain a permit from the military authorities to

export cotton. Permits were necessary for the transportation of cotton. Weil and Jenny did not receive cotton enough to reimburse themselves, of the goods they had furnished, and *Weil brought forth a claim against the State of Louisiana for the balance, which was awarded in his favor.* «Although I had intimate relations with Weil, during these transactions, he never spoke to me of having lost any cotton *by way of a capture on the Rio Grande*, or of exporting any other cotton than that which he received from Governor Allen or through him. *Had he suffered such a loss I certainly would have known it.*» He identifies the signatures in several letters of Weil, Jenny and other, on which are marked in red ink the initials E W. H.

Deposition of Jack Levy. He identifies the signatures of Isaac Levy, Max Levy and Benjamin Weil. He is Max Levy's brother, and Isaac's Cousin. He knew that said three individuals were partners in the firm of «Levy, Bloch and Co.» doing business in Mexico, Louisiana and Texas, during the war.

Deposition of L. G. Aldrich. He was a captain in the Confederate army and adjutant of the General stationed at Brownsville. He explains the manner in which cotton was exported, by what ports it was done, of the permits necessary to that effect, of the regulations established by the Mexican Government for the importacion of cotton, &c. He says that prompt intelligence was given as to the acts of the Mexican authorities; that *amicable relations existed among the authorities of both sides of the river: that no report was ever made of any capture of cotton, and that it was impossible that 1900 bales of cotton should have been captured by the authorities of Mexico, without the Headquarters knowing it.*

Deposition of W. R. Boggs. He was a brigadier General and chief of staff of General E. Kirby Smith, who was in command of the Trans-Mississippi Department. He was stationed at Shre-

veport in 1863, 1864, and 1865. He knew Geo. D. Hite, and knows that he was in Shreveport during the whole year of 1864, having seen him there from time to time. He never heard of any capture of cotton. «In my capacity,» he says, «any capture of cotton would have been known to me.»

Deposition of John C. Evins. He was before the war, a custom-house officer of the United States at Laredo, where he remained during all the war and up to 1869. He knows almost every body that live hundreds of miles, up and down the river. He is thoroughly acquainted with the country. *There are no crossings for waggons from Laredo upwards towards Piedras Negras. Duties were always paid to the Mexican Government at the local custom-houses.*

The distance between Alleyton and Rio Grande is about 260 miles. There are *no ferries between Eagle Pass and Laredo.* «*I never heard,*» he says, *of the capture of any cotton at any place of the Rio Grande; and none could have taken place without my knowing it.*»

The custom-house officers, on both sides of the river, were very vigilant, *I don't believe that any train of 1900 bales of cotton belonging to a single individual ever crossed from Texas into Mexico,* and I must add that *the capture of such a train, had it taken place on any point of the river, and especially in the neighborhood of Laredo, would have been brought into my notice.* The report of such a capture would have circulated in Texas, and frightened all the traders.

In September 1864 the roads were *full of trains going and coming from Mexico.* The rivers are generally overflowing in June and July, and *I do not believe the Rio Grande is fordable in September;* it is only fordable at very few points during all the seasons of the year.

Deposition of John C. Ransom. He was a captain in the

Quarter Master Department of the Confederate army, and was stationed at San Antonio, Texas, from *May 1st 1864, up to May 1st 1865*. He was constantly in close business connections with the contractors and other persons occupied in the transportation of cotton to the Rio Grande. *Never heard of Benjamin Weil. He does not believe it possible that the Mexican authorities could have seized 1900 bales of cotton, without the fact coming into his knowledge.* Such a capture would have frightened the owners of cotton, and the persons employed in its transportation. In his opinion *there never was a train carrying 1900 bales of cotton*. He speaks of the regulations for the exportation of cotton, permits required, &c.

The undersigned likewise presents the following document.

A letter of E. C. Belling, Judge of the Federal District Court of Louisiana, showing that Bloch and brothers last April or May, filed before said Court a petition about their failure, which petition was contested because in the list of assets a claim of «Benjamin Weil vs. the Republic of Mexico» for cotton, was fraudulently omitted. The Bloch brothers answered the charge through counsel, saying that when the lists were filed, within the last two years, they knew nothing of said claim. The court gave credence to the Bloch, and they were *reinstated*.

The Mexican Government presents, therefore, evidence, as clear as noon day-light, showing that the claim of Benjamin Weil is *the most scandalous fraud* ever committed before this Commission; because there is *not a single word of truth in the statement of the fact on which it is based*.

To refuse a revision of the case now when such proof exists, would be to close the eyes voluntarily to evidence, and to sanction knowingly a fraud, outraging justice.

The undersigned appeals to the Umpire's sentiments of jus-

tice, to his feelings as an honest man, to his sense of probity which has won for him a spotless reputation.

Can there be any reason in the world to award a premium on crime?

Must the poor Mexican Treasury suffer an enormous burden to the benefit of infamous speculators, just to avoid correcting an involuntary error, when it is yet time to correct it?

No, it is not possible that such should be the proceeding of an honest judge, whose only rules of action are truth, justice and equity.

[Signed.]

ELEUTERIO AVILA.

[Presented, September 19th. 1876.]



Declaration of the Umpire in regard to the motions for re-hearing.

The Umpire having completed and transmitted to the Commission his decisions upon all the claims which have been submitted to him, numbering four hundred and sixty four, has *now*¹

¹ On the 29th. January, 1876, the Mexican Agent presented to the Commission his motions for re-hearing in the cases of Geo. L. Hammeken, n^o 158, Benjamin Weil, n^o 447, «La Abra» mining Co. n^o 489, and Thadeus Amat et al,—the bishops of California—n^o 493, all vs. Mexico, «which motions were by the Commissioners ordered to be filed and transmitted to the Umpire for decision» as the record of the American Secretary reads:

Said motions were transmitted, as ordered, and the aforesaid Secretary received the following letter from the Umpire.

«The Secretary of the United States and Mexican Claims Commission has transmitted to the Umpire on the 5th. ult. various motions of the Agents of Mexico and of the United States respectively, having for their object the amendment and modification of certain awards and the rehearing by him of several cases mentioned therein.»

«The Umpire has already before him a number of cases and will receive several more, which have been or are to be sent to him for decision, by order of the Commissioners. He thinks it incumbent upon him to examine and decide upon all the cases before taking into consideration any motions made by the respective Agents, and he would not be justified in delaying his decisions by reason of the aforesaid motions. The consideration of claims now before him will occupy several months, whilst the arguments submitted by the Agents in support of the motions abovementioned are of some length and will require much thought and time.»

The Umpire feels, therefore, bound to decline even to consider for the present whether the awards and cases in question ought to be amended, modified or re-heard. After the whole of the cases ordered by the Commissioners to be referred to the Umpire

relieved from the Secretary of the Commission motions of the Agents of the U. S. and of Mexico respectively that some of those cases should be reheard.

The wording of the Convention of July 4, 1868, by which the Commission was established and which laid down the duties of the Umpire, was to the effect that when the Commissioners should fail to agree in opinion upon any individual claim, they should call to their assistance the Umpire whom they may have agreed to name; and such Umpire, after having examined the evidence adduced for and against the claim, and after having heard, if required, one person on each side on behalf of each Government, on each and every separate claim, and consulted with the Commissioners, shall decide thereupon finally and without appeal. There is also a stipulation in the Convention that the President of the U. S. of America and the President of the Mexican Republic solemnly and sincerely engage to consider the decision of the Commissioners conjointly, or of the Umpire, as the case may be, as absolutely final and conclusive upon each claim decided upon by them or him, respectively, and to give full effect to such decisions without any objection, evasion or delay whatsoever. ²

shall have been disposed of, he will have no objection to take into consideration any motions which may then be made to him by the respective Agents.»

«The Umpire has, therefore, the honour to return the motions above referred to, with the papers connected with them, and begs to express his hope that the Agents of the United States and Mexico will not transmit to him any such motions until the whole of the fresh cases ordered by the commissioners to be forwarded to him shall have been disposed of.—Edward Thornton—Washington, March 1st. 1876. [Note by the Mexican Agent].

2 The 5th. article of the convention says:

The High Contracting Parties. . . further engage that every such claim whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall *from and after the conclusion of the proceedings of said Commission* be considered and treated as finally settled, barred and thenceforth inadmissible.»

When the Mexican Agent first presented his motions for rehearing, the proceedings of the Commission had not concluded: [Remark of the Agent of Mexico.]

The Umpire understands from the abovementioned wording that he was called upon to examine and decide upon the claims precisely as they were sent to him and to peruse no more and no fewer documents, statements or testimonies than had been before the Commissioners previously to their having formed their disagreeing opinion, and, further, to hear, if required, one person on each side on behalf of each Government, on each and every separate claim. The Umpire has performed this duty to the best of his ability.

It cannot be doubted that he had no right whatever to examine or take into consideration other evidence than that which had already been before the Commissioners, had been examined by them and transmitted to the Umpire. If he had done so, such a course would have been contrary to the dictates of the Convention, and would have been eminently unjust until the opposite side should have had an opportunity of rebutting such posthumous evidence. If then it were in the power of the Umpire to re-hear any of the cases which have now been returned to him, he could only re-examine the same documents and evidence, and no more, upon which he has formed his opinions. As he has already examined all these documents and evidence with all the care of which he is capable, it is not likely that a re-examination of them would tend to alter his opinion. ³

The decisions of the Umpire, without his wishes being consulted, have generally been made public both here and in Mexico, It is known that by the Convention they are final and

³ Certainly not, unless the re-examination should be made in a spirit free from all prejudice. It was under this impression that the Mexican Agent said to the Umpire in his motion for re-hearing the «La Abra» claim.

«And that in case he [the Umpire] condescends to revise, he should not consider the decision as his own work, but rather as if written by an utter stranger, for thus only will he be able to rectify its grounds in an independent and unbiassed manner, and to render a sure judgment in an affair that sooner or later must have great publicity and be the object of commentaries.» [Note of the A. of M.]

without appeal. It is not impossible, and indeed it is very probable, that some of the claimants, in whose favour awards have been made, may have been able to obtain, on the credit of these final decisions, advances of money or other values, or may have sold and entirely assigned away to other persons, not previously interested in the claims, the whole amount of the awards. The Umpire is aware that by the law of the United States (Revised statutes Sec. 3,477) transfers and assignments of claims against the United States are null and void unless made after the issuing of a warrant for the payment thereof. But he does not believe that this law comprises claims against Mexico, although they may finally be paid through the Treasury of the U. S.; and there is no doubt that what is supposed, on the faith of the Convention, to be a final decision of a claim, would give the claimant a credit of which he would be able and likely to avail himself. It is, therefore, highly probable that the alteration or reversal of a decision might seriously prejudice the interest of other parties besides the claimant, parties who were in no way concerned in the origin of the claim. ⁴

But the Umpire believes that the provisions of the Convention

⁴ Although many observations can be made on this paragraph; the following seem sufficient:

The revocation or modification of an award can proceed from no other cause than a judgment in a contrary or different way of that taken at first. In other words: from the persuasion that the burden thrown upon the condemned party was not just in the whole or in certain points, and is it perhaps, more in conformity with the equity to sustain an unjust sentence given against a Government—the Government of Mexico—than to prejudice the interests of persons really or apparently not previously concerned in the claims, and who ventured themselves to enter into speculations upon its result?

Why should the Mexican Government be less entitled to consideration than some speculators whose existence is doubtful and whose good faith is more doubtful still?

Since the transfers or assignments of the the awards of the Commission against the Government of the U. S. are null and void, how can it be that the awards of the same Commission against Mexico be lawfully transferable?

Ought there not to be a reciprocity in all the effects of the convention which created the Commission? [Note by the Mex. Ag.]

debar him from re-hearing cases on which he has already decided. By it the decisions are pronounced to be final and without appeal, and the two Governments agree to consider them as absolutely final and conclusive, and to give full effect to them without any objection, evasion or delay whatsoever. He believes that in view of these stipulations *neither* Government has a right to expect that any of the claims shall be re-heard.

In the single case of Schreck no. 768 the Umpire listened to the request of the Agent of the United States to reconsider, because it appeared that there was a law of Mexico ⁵ which concerned the citizenship of the claimant, to which the Commissioners, of course, had access, but no new evidence was offered, or taken into consideration in that case. ⁶

In view, therefore, of the abovementioned reasons the Umpire feels bound to decide that he cannot and ought not to rehear the cases which have been returned to him.

This decision covers the cases:

- | | | | |
|----|------|----------------------------|----|
| Nº | 58. | Joseph W. Hale vs: México. | |
| ,, | 73. | F. W. Latham assignee &. | |
| ,, | 158. | George W. Hammeken | ,, |
| ,, | 302. | J. M. Burnap. | ,, |
| ,, | 447. | Benjamin Weil. | ,, |
| ,, | 489. | La Abra Mining Co. | ,, |
| ,, | 493. | Thadeus Amat et al. | ,, |
| ,, | 518. | R. M. Miller. | ,, |

5. The mexican Constitution, art 30.

6. Neither, in the case of G. L. Hammeken vs. Mexico, and in that of «La Abra,» was any new evidence presented by the Agent of Mexico. Nor was it necessary to take any new evidence into consideration to form the conviction that the fact alleged in the case of B. Weil is physically and morally impossible. The Mexican Agent called the attention of the Umpire upon certain laws, but the Umpire did not find it proper to say anything about them, as he did when the quotation was made by the Agent of the United States. [Note by the mexican Agent.]

- Nº 244. Geo. White. „
 „ 748. M. del Barco & Roque de Gárate.
 „ 295. Augustus E. St. John. „

The case Nº 776. «Alfred A. Green vs: Mexico,» the Umpire thinks it but fair to re-examine, because it is shown that certain evidence which was before the Commissioners, was not transmitted to the Umpire with the other documents upon which he made his decision. The Umpire will therefore reconsider this case as far as that evidence is concerned, but not with reference to the fresh arguments which have been submitted by the counsel for the claimant.

The motions to re-hear which accompany the above mentioned cases, are not merely a request to reconsider them, but are a critical review, particularly on the part of the Agent of Mexico, of the grounds upon which the Umpire has founded his decision. It is argued that they are all ill-founded and erroneous. This may be the case; the Umpire does not pretend to be infallible; but he has decided to the best of his ability and conscience upon the papers which have been submitted to him. It is clear that whichever way his decision may have turned, the claimant or defendant could always have found arguments to dispute its correctionness and justice; indeed an impartial Umpire is generally subjected to such criticisms.⁷

7. Indeed any Judge, impartial or partial is subject to criticism, with the only difference that such a criticism shall appear manifestly unfounded when there is no satisfactory reason for it. But independently of the partiality or impartiality of a Judge, he is subject to error, and the Umpire himself professes not to be infallible. The Mexican Agent has never made against Sir Edward Thornton the charge of partiality in his briefs and arguments, and on the contrary, he has availed every opportunity to do justice to the fairness and rectitude of judgment shown by the said Hon. gentleman in many of his decisions. But the Mexican Agent must be allowed to repeat that Sir Edward, could have erred in some of his appreciation. The Agent of Mexico, does not pretend, of course, to be infallible. He is undoubtedly as much, or even more, subject to error than the Umpire, and only submitted to him his observations in a candid but in no way offensive manner. (Note by the M. A).

In his motions to re-hear, the Agent of Mexico has stated many facts which may be capable of proof, but which have not been proved by the papers submitted to the Umpire.⁸ He has also shown immense ability in disputing the observations made by the Umpire in support of his decisions, and in examining and discussing the merits of the claims with the greatest minuteness and detail; and the Umpire is painfully impressed with the feeling that he might with fairness have been allowed the advantage of the searching examination of the Agent of Mexico when these claims were first submitted to him, rather than after he had decided upon them. There was at that time better cause for doing so than there is now; for one of the two Commissioners had already decided in favour of these claims before they came to the Umpire. The latter is but *one of three Judges*, and he would have been glad to have been favoured and assisted by the minute criticism which the Mexican Agent has now bestowed upon some of these claims.⁹

8. The Mexican Agent stated also in his motions several facts of decisive importance which did not require any proof, being evident in themselves. Was it necessary, for instance, to prove the physical impossibility of the alleged fact that a train loaded with cotton crossed the Rio Grande 160 miles *above* Brownsville, *on its way to Matamoros* and was captured at three hundred or more miles *above* Brownsville,—between Piedras Negras and Laredo? [Remark by the Mex. Ag.].

9. The Agent of Mexico does not deserve the commendation made by the Umpire of his ability; but he thinks that the inculcation which follows such a commendation is not more deserved by him. He always has endeavored in his arguments before the Umpire to present every case as clearly as he was able to understand them, and to discuss—sometimes at a length perhaps greater than the Umpire would find it proper—all the grounds of the opinions rendered by the American Commissioner; but this gentleman in some cases,—as in that of «La Abra, for instance—did not take the trouble of founding his opinion, and the Agent of Mexico called the attention of the Umpire to this circumstance in his first motion for the re-hearing of said case, by the following remark: The counsel for the claimant asked for and obtained *twice*, extension of time for the presentation of their arguments, *when they had before them the grounds of the opinion contrary to their claim, whilst that favorable to it, which discussion would be the matter for the argument of the defense, had no foundation at all, as the aforesaid counsels themselves had remarked in their argument before the Umpire.*»

In the abovementioned case, as well as in some others, the Agent of Mexico did not

In the case n^o 489 «La Abra Mining Co. vs. Mexico,» the Mexican Agent appeals to authorities, as to the value of ores, who, he states, are at Philadelphia. Why were not the statements of these gentlemen—of whose existence the Umpire was not aware, and to whom he had not access—reduced to evidence and produced before the Commission?¹⁰

In one case where both the Commissioners had agreed upon a certain portion of the claim, the Agent of Mexico asserts that the Umpire must have approved of their decision, because he did not express his dissent.¹¹ The Umpire does not accept this

know, nor even could guess the grounds of the decision favorable to American claimants until it was given by the Umpire. He, nevertheless, always endeavored to the best of his—unfortunately for him, not *immense*, but very limited—ability, to show that the claims were groundless in themselves whenever the American Commissioner gave to the interested parties the *chance*—as it was called by him—of being transmitted to the Umpire for decision.—Annotation by the M. A.—

10 Because neither the Mexican Government, nor probably anybody else but claimants could ever have believed that a pile of stone known in Mexico by the name of «Tepetate» should have been converted, for the benefit of said claimants in valuable ore, for as the Umpire says in his award, *there was not sufficient proof, nor indeed such proof as might have been produced* about the quantity and quality of the ore extracted from the mines; because nobody could have foreseen that notwithstanding that, as the Umpire also says, «the idea formed even by persons intelligent in the matter»—referring to the witnesses for claimants—of the «quantity of a mass of ore, must necessarily be vague and uncertain and that of its average value still more so,» the highest possible value should have been fixed to the so-called ore of the claimants; and, moreover, because *even the American Commissioner* did not allow anything to them on this account; so that not only before the Commissioners rendered their disagreeing opinions, but even when the case was transmitted to the Umpire, there was no reason whatever for producing any evidence in regard to that point.

What the Mexican Agent intended to show to the Umpire, not only by the authorized statement of Sr. D. Mariano Barcena, a distinguished professor of Mineralogy, but with reference to the products of the richest mines—those of Nevada,—was that in allowing to the «Abra Co» one hundred thousand dollars for the value of their ore, the Umpire allowed them as much, if not more, than the richest mines can produce. [Note by the M. A.]

11. It was precisely the contrary assertion, the one which the Agent of Mexico intended to lay down in the following paragraphs of his motion for re-hearing the «Abra» case:

Inasmuch as this Commission is a board, there cannot prevail in it any other vote or opinion than that of the majority of its members, or, in other words, the Third of these members can only decide such points upon which a disagreement of opinions between the Commissioners had actually occurred.

argument; for where the two Commissioners are agreed, the Umpire has nothing more to do in the matter, either to approve or to disapprove.

In another case the Mexican Agent complains that the Umpire had awarded more than the United States Commissioner. So that in one case the Agent of Mexico would give the Umpire the power of overruling the decision agreed upon by both the commissioners,¹² and in the other he would not allow him to disagree with one of them whose decision was contrary to that of the other.¹³

So it has been understood and practiced in all the international Commissions of this kind, *and the same understanding and practice has regulated the proceedings of this Commission*; FOR INSTANCE:

In the case of Bernard Turpin vs. Mexico, n^o 90 there were two points for decision; the Commissioners agreed upon one of them, and the Umpire said: «With regard to the second claim it appears that the Commissioners have agreed, *the Umpire in not, therefore called upon to say anything about it.*»

The Mexican Agent's mind was to show that the practice of not touching in the final decision any point upon which the Commissioners were not in disagreement—which practice struck the same Agent as being the proper one—had been followed by the Umpire. [Note by the Mex. Ag.]

12. If there is anything in the motions of the Mexican Agent, that could be taken in that sense, he most solemnly declares that it never was his intention to acknowledge in the Umpire the power of overruling the decision agreed upon by both the Commissioners. How could he acknowledge such a power when he had just stated that *only* the vote of the majority could prevail in the Commission?

(Note by the Mexican Agent.)

13. It was not the Agent of Mexico but the nature of the Umpire's functions which did not allow him to decide any point not referred to his examination and decision. When one of the Commissioners was of opinion that nothing ought to be awarded to a claimant, and the other Commissioner proposed that such claimant should be indemnified with the sum of one thousand dollars, the Umpire could decide, either that nothing was to be paid, or that claimant should receive an indemnification *within, or up to the amount fixed in the affirmative opinion*, but not of a higher sum; because whatever additional sum the claimant might receive, would emanate from the *single* vote or opinion of the Umpire; and if, as in the «Abra» case, the Commissioner in favor of the claim had expressed the opinion that nothing more should be awarded than what he especially designated, the decision granting something additional, cannot be considered as a decision of the Commission passed by the vote of its majority, but on the contrary, as given *against* such vote.

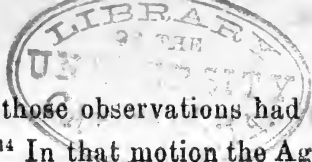
Therefore the Agent of Mexico found irregular and improper that the Umpire should have awarded something to claimants in the abovementioned case expressly

In the abovementioned case no. 489 the Mexican Agent would wish the Umpire to believe that all witnesses for the claimant have perjured themselves, whilst all those for the defense are to be implicitly believed. Unless there had been proof of perjury, the Umpire would not have been justified in refusing evidence to the witnesses on the one side or the other and could only weigh the evidence on each side, and decide to the best of his judgment in whose favour it inclined. IF PERJURY CAN STILL BE PROVED BY FURTHER EVIDENCE, the Umpire apprehends that there are Courts of Justice in both countries by which perjurers can be tried and convicted, and HE DOUBTS WHETHER THE GOVERNMENT OF EITHER WOULD INSIST UPON THE PAYMENT OF CLAIMS SHOWN TO BE FOUNDED UPON PERJURY. IN THE CASE NO. 447 «BENJ. WEIL VS. MEXICO,» THE AGENT OF MEXICO HAS PRODUCED CIRCUNSTANTIAL EVIDENCE WHICH, if not refuted by the claimant, WOULD CERTAINLY CONTRIBUTE TO THE SUSPICION THAT PERJURY HAS BEEN COMMITTED AND THAT THE WHOLE CLAIM IS A FRAUD. For the reason already given it is not in the power of the Umpire to take that evidence into consideration, BUT IF PERJURY SHALL BE PROVED HEREAFTER, NO ONE WOULD REJOICE MORE THAN THE UMPIRE HIMSELF THAT HIS DECISION SHOULD BE REVERSED AND THAT JUSTICE SHOULD BE DONE.

With regard to the case no. 493 Thadeus Amat et al vs; Mexico, the Umpire must repeat his regret that the observations made by the Agent of Mexico in his motion to re-hear had not been transmitted to him before he pronounced his decisions and

against the opinion of both the Commissioners, thus deciding in the benefit of claimants a point not only unreferred to his decision, but set aside before referring the case.

[Note by the Mex. Ag.]



that the facts by which he sustains those observations had not been proved before the Commission. ¹⁴ In that motion the Agent states that if observations had not been previously made and evidence presented by the defense with regard to the amount of the sum claimed in this case, it was not because the Mexican Government recognized such an amount, but because the previous question was to be decided whether the case by its nature came within the cognizance of the Commission. But the order of the Commission, which was transmitted to the Umpire, was to the effect that Mr. Commissioner Wadsworth being in favour of making an award to the claimant, and Mr. Commissioner Zamacoma being in favour of rejecting the claim, it was referred to the Umpire for his *final decision*. He was therefore clearly entitled to suppose that all the observations which the defendant had to make, had been made, and that all the evidence which was in possession of the Mexican Government had been produced. Indeed the Umpire was firmly convinced that it was intended that he should finally decide upon the case with such evidence as had been submitted to the Commissioners and was forwarded to him. ¹⁵

14 The first and principal point discussed in the argument of the Mexican Agent before the Umpire, was that the case was not one of those referred to the Commissioners, and the Umpire did not take this point into consideration. *None of the facts by which the Mexican Agent sustained his motions for re-hearing in the case of Thadeus Amat et al, need be proved.* The award of the Umpire is founded on the erroneous intelligence of a law, and to show this, no facts were necessary, but only to study the wording and spirit of said law in order to make a proper application of the same. The only fact at stake has always been unquestionable, to wit: that the claim arose out of a transaction of a date prior to the 2nd of Februry, 1848: the law of Feb. 8, 1842 by which the Bishop of the Californias was released from the administration of the Pious Fund, and the law of October 24th. 1842 by which such properties of the Fund as had actual products, were incorporated into the National Treasury, the Government promising to pay to the same fund [not to the aforesaid Bishp] interest at six per cent upon the amount of the proceeds of the sale of said properties. [Note by the Ag. of Mex.]

15 There had also been transmitted to the Umpire for *final decision* many other cases upon which he only decided that they did not come under the cognizance of the Commission. So he did in the case of Treadwell and Co. vs. Mex. n^o 149, and in all the case^s

If there be an arithmetical error in one of the calculations which the Umpire has made, as is stated by the Agent of Mexico at paragraph 66 of his argument dated Sept. 19 1876 there can be no objection to its being corrected and the Umpire will examine the case with that view.

The Umpire has been forced into the conclusion that he has no authority to re-hear the abovementioned cases; at the same time he will not admit, but wholly denies, the inference which will generally and naturally be drawn from the observations made by the Agent of Mexico, that any stain can attach to his honour by reason of his refusal to re-hear those claims.¹⁶

(Signed)

EDWARD THORNTON.

Washington, Oct. 20 1867.»

where the violation of contracts voluntarily entered into was alleged; and so he did also in the case of *Mc. Manus. Brothers, vs. Mex. n° 348*, for forced loans and all other cases of the same cause.

In transmitting a case to the Umpire for his decision it would never have been intended to deprive him of the first of his natural powers: that of examining and deciding whether or not such a case was within the cognizance of the Commission, and whether or not there was in it any *injury*, according to the Convention: (Note by the Ag. of Mex.)

16. The observations to which allusion is made here, are probably the following:

«To refuse a revision of the case—that of B. Weil—now that such proof exists would be tantamount to close the eyes to evidence, and to sanction knowingly a fraud, outraging justice.»

«The undersigned appeals to the Umpire's sentiments of justice, to his feelings as an honest man, to his probity which has won for him a spotless reputation.»

Can there be any reason in the world to award a premium on crime?

Must the poor Mexican Treasury suffer an enormous burden to the benefit of infamous speculators, just to avoid correcting an involuntary error, when it is yet time to correct it?

No, it is not possible that such should be the proceeding of an honest judge, whose only rules of action are truth, justice and equity.»

It is seen that the basis of these observations was the understanding that it was time yet for the Umpire to correct his involuntary errors; and as the Umpire has been of a contrary opinion in regard to that basis, it is to be understood that in refusing the rehearings asked for, he did not intend to sanction any fraud; and less so, when he has clearly and emphatically stated in pronouncing his decision upon those motions, that «if perjury shall be proved hereafter no one would rejoice more than the Umpire himself that his decision should be reversed and that justice should be done.» [Note by the Mex. Ag.]

DIPLOMATIC CORRESPONDANCE.

IN REGARD TO CERTAIN STATEMENTS
OF THE MEXICAN AGENT BEFORE THE UNITED STATES AND MEXICAN
CLAIMS COMMISSION.

REPUBLIC OF MEXICO.—DEPARTMENT OF FOREIGN AFFAIRS.

SECTION OF AMERICA.

LEGATION OF MEXICO IN THE UNITED STATES
OF AMERICA.

Washington, November 28d. 1876.

NUMBER 159.

Note to Mr. Fish communicating certain statements of the Agent of Mexico
at the close of the Umpire's labors.

After conferring with Sr. Avila I wrote down with his agreement the statements he was going to present at the last meeting that the Agents and Secretaries of the Commission would have, for the purpose of publishing the last decision of the Umpire. Sr. Avila intended that those statements should be spread on the journal of the meeting, but having failed in his object because the Agent of the United States was opposed to this

course, he addressed me a communication, the copy of which is herewith annexed, marked no. 1.

To day I address a note to the secretary of State [a copy of which is also annexed, marked no. 2] enclosing a copy of Sr. Avila's communication, adding that this Gentleman's views were in conformity with the instructions given by my Government.

I reiterate the protestations of the high estimation, with which I am, sir your most obedient.

[Signed.]

IGNACIO MARISCAL.

To the secretary of Foreign Affairs.

Mexico.

(Copy nº 1.)

Washington, Nov. 21st. 1876.

In the meeting that the Agents & Secretaries of the Commission held yesterday, for the purpose of publishing the Umpire's last resolutions, I presented, in writing, certain statements, with a view that they should be inserted in the record of the proceedings of the day; but it was not done so because both the Agent and the Secretary of the U. S. did not think it proper. —They are as follows.

1st The Mexican Government in fulfilment of art. 5th of the Convention of July 4th 1868, considers the result of the proceed

ings of this Commission as a full, perfect and final settlement of all claims referred to in said Convention, reserving nevertheless the right to show, at some future time, and before the proper authority of the U. S., that the claims of Benjamin Weil no. 447 and «La Abra Silver Mining Co.» no. 489, both on the American docket, are fraudulent and based on 'affidavits of perjured witnesses; this with a view of appealing to the sentiments of justice and equity of the U. S. Government, in order that the awards made in favor of claimants should be set aside.

2nd In the case no. 493 of «Thadeus Amat and others vs. Mexico,» the claim presented to the U. S. Government on the 20th of July 1859, and to this Commission during the term fixed for the presentation of claims in the Convention of July 4th 1868, was to the effect that the «Pious Fund» and the interest accrued thereon should be delivered to claimants; and though the final award in the case only refers to interest accrued in a fixed period, said claim should be considered as finally settled *in toto*, and any other fresh claim in regard to the capital of said fund or its interest, accrued or to accrue, as for ever inadmissible.

3rd That the Umpire having allowed compensations in several cases with the proviso that the interested parties should prove their American citizenship, and that they were legitimately entitled to be the recipients of such compensations; the Mexican Government expects that the amounts corresponding to such cases will be deducted from the sum total of the awards, if, within a prudent term, said conditions are not fulfilled.»

All of which I communicate for your information renewing to you the assurances of my consideration.

[Signed.]

ELEUTERIO AVILA.

Sr. Ignacio Mariscal, Envoy Extraordinary and Minister Plenipotenciary of Mexico.
—Present.

(Copy no. 2.)

MEXICAN LEGATION IN THE U. S. OF AMERICA.

Washington, Nov. 22nd 1876.

Mr. Secretary:

I have the honor to annex herewith, for the information of the Government of the United States, a copy of a communication, dated yesterday, addressed to me by Sr. Eleuterio Avila, Agent of Mexico before the U. S. and Mexican claims Commission, adding, for my part, that the manifestations contained in the annexed note of Sr. Avila are in accord with the instructions he has received from the Government of Mexico.

I avail myself of this opportunity, Mr. Secretary, to renew to you the assurances of my high consideration.

[Signed.]

IGNACIO MARISCAL.

To the Hon. Hamilton Fish.

&c. &c. &c.

Present.

True copy.

(Signed.)

MARISCAL.

LEGATION OF MEXICO IN THE UNITED STATES
OF AMERICA.

NUMBER 170.

Answer of Mr. Fish to the above, and my reply.

Washington, December 8th 1876.

Referring to my note no, 159 of the 23^d of last November, I will say that I have received from Mr. Fish an answer to the note which I have already communicated to that Department. I send herewith a copy and a translation of said answer under nos. 1 & 2. In it Mr. Fish endeavors to prevent that his silence should be construed into an assent to Sr. Avila's manifestations; he would be glad to see that my notification relating thereto, should be inoperative.

I annex herewith, under no. 3, a copy of my note of to day containing the reply I thought advisable to make him in order to show that our object was not to give rise to any question or difficulty whatever, nor to evade the fulfilment of the obligations imposed on us as the result of the decisions of the Commission.

I renew to you the assurances of my consideration.

[Signed.]

IGNACIO MARISCAL.

To the Secretary of Foreign Affairs.

(Copy n^o 1)

DEPARTMENT OF STATE.

Washington. December 4th. 1868.

Sir:

I have received your note of 22nd accompanied by a communication of the 21st ultimo, addressed to you by Don Eleuterio Avila, the Agent on behalf of Mexico before the Commission under the Convention of the 4th of July of 1868. Mr. Avila states that this communication was presented at the last meeting of the Agents and Secretaries of the Commission, but was not inserted in the minutes, as it being deemed improper to do so. He thereupon addresses you and objects to the binding effect of certain of the awards made, and states his understanding of the effect of others.

You inform me that you transmit a copy of his communication for the information of the Government of the United States.

By article second of the Convention the two Government bind themselves to consider the decisions of the Commissioners and of the Umpire as absolutely final and conclusive, and to give full effect to such decisions, without any objection, evasion or delay whatsoever, and by the 5th article the High Contracting parties agree to consider the result of the proceedings of the Commission as a full, perfect and final settlement of every claim upon either Government arising from transactions prior to the exchange of ratifications thereof.

It may be quite proper that Mr. Avila should advise you of his views as to any particular awards or as to any points connected with the closing labors of the Commission, and you may

have felt it to be your duty to bring to the notice of this Government those views so communicated to you.

I must decline, however, to entertain the consideration of any question which may contemplate any violation of, or departure from the provisions of the Convention as to the final and binding nature of the awards, or to pass upon, or, by silence, to be considered as acquiescing in any attempt to determine the effect of any particular award.

With your appreciation of the objects in contemplation in this method of settlement of differences between two Governments, and with your intimate acquaintance with the particular provisions of this Convention as with reference to the binding character of the awards made by the Commissioners or by the Umpire, you will readily appreciate my extreme unwillingness to consider that at the moment when the proceedings relating to the Commission have been brought to a close, and the obligation upon each Government to consider the result in each case as absolutely final and conclusive becomes perfect, the Government of Mexico has taken or purposes to take any steps which would impair this obligation.

I avail myself of this occasion, Sir, to offer to you a renewed assurance of my highest consideration.

[Signed.]

HAMILTON FISH.

Sr. D. Ignacio Mariscal &c., &c.

True copy. Washington, December 8th., 1876.

CAYETANO ROMERO,

[2d. Secy.]

(Copy n^o 3.)

Washington, Dec. 8th 1876.

Mr. Secretary: I have had the honor of receiving your note of the 4th inst. in answer to mine of the 22nd ult. to which I annexed a copy of the statements made by Sr. Avila, Agent of my Government before the Claims Commission. You are pleased to state that it is not possible for you, even by Keeping silent, to give to understand your assent to take up any question brought forth with a view of evading the fulfilment of the Convention in regard to the final issue of the decisions, nor as a consent to any attempt to modify the effect of any particular decision.

It is not my intention, nor the intention of Sr. Avila to open any question whatever, nor to put in doubt the final and conclusive character of the abovementioned awards. As a proof of this Sr. Avila begins his first statement by saying: «that the Mexican Government, in fulfilment of Art. 5th of the Convention of July 4th 1868, considers the result of the proceedings of this Commission as a full, perfect and final settlement of all claims referred to said Commission.» I beg leave to call your attention to the fact that Sr. Avila only expresses afterwards the possibility that the Mexican Government may, at some future time, have recourse to some proper authority of the United States to prove that the two claims he mentions were based on perjury, with a view that the sentiments of equity of the Government of the United States, once convinced that frauds have actually been committed, will then prevent the definite triumph of these frauds. It seems clear that if such an appeal should be made, it will not be resorted to as a mean of discarding the obligation which binds Mexico, and that, should it prove unsuccessful, the Mexican Government will recognize its obligation as before.

In his second statement Sr. Avila intended only ex-

press his Government's opinion as to the impossibility of claiming, at any future time, the capital of the Pious Fund, the accrue interest on which are now going to be paid, in conformity with the award. He endeavors to avoid, if possible, a future claim from the interested parties, through the U. S. Government; but does not pretend to put in doubt the present award.

The third statement is an unavoidable consequence of some decisions in which it is left to the U. S. Government to decide whether the claimant is or not a legitimate successor to the injured party, and whether he is or not an American citizen; on the decision of which points it will naturally depend whether the award, that Mexico is to pay, is applicable to any body.

It is not, then, the spirit of these statements, to raise any doubt or difficulty in regard to the obligation of the Mexican Government to submit to the results of the Commission. Sr. Avila has presented them, in fulfilment of instructions received from his Government, with the only view I have endeavoured to explain, and, for my part, I have communicated them to that Department without any idea of raising questions of any kind whatever.

I congratulate myself to renew to you on this occasion the assurances of my very high consideration.

[Signed]

IGNACIO MARISCAL.

Hon: Hamilton Fisch.

&c. &c. &c.

A true copy, Washington Dec 8th 1876.

[Signed]

CAYETANO ROMERO.

2nd Seccy.

Mexican Republic.—Department of Foreign Affairs.—Section of America.—No. 40.—Statements of the Agent before the Joint Claims Commission.

Mexico, 1st. May 1877.

Your note no. 170, of the 8th Dec. ultimo, was received at this Department on the 27th of last March, and its enclosures nos. 1 and 2, impose me that the Secy of State, Hon. Hamilton Fish, construing the statements of the Mexican Agent, that you had transmitted to him, as an objection to the obligatory effect of the awards of the Joint Commission, refused to take them into consideration, and even thought it necessary not to keep silent about them, fearing that his silence might be construed into an assent of the endeavor to determine the effect of some of the awards.

The explanations you have given to said Secretary of State are wholly in conformity with the construction that the Mexican Government gives to the statements of its Agent.

Far from intending to elude the fulfilment of the obligations it contracted through the Convention of the 4th July 1868, the same Government has already given a conclusive proof of its resolution to fulfill them, having made very amidst difficult, circumstances, the first installment of the balance awarded against it.

And, however painful it may be for Mexico to give away the considerable amounts of the awards allowed in the cases of Benjamin Weil and The Abra mining Company, when the fraudulent character of these claims is once known; if the appeal to the sentiments of justice and equity of the U. S. Government, announced in the first of the statements in question, should, for

any cause whatever, be ineffective, the Mexican Government will conscientiously fulfil the obligations imposed on it by that international compact.

In regard to the case of the Archbishop and Bishops of California, the Mexican Government, far from putting in doubt the final effect of the awards, has declared in the second of said statements that in conformity to article 5th of the Convention, the whole claim presented to the Commission must be considered and dealt with as finally arranged, and as dismissed and for ever inadmissible any thing solicited by claimants, but not allowed by the Commission. In other words: The Mexican Government recognizes itself bound to pay the awards allowed by the Umpire to the claimants in behalf of the Catholic church of Upper California; but this settles finally the claim in regard to every thing belonging to the Pious fund of the Missions of California, and none other can ever be presented, and much less sustained by the U. S. Government, or admitted at any future time by Mexico, in conformity with the spirit and letter of the Convention of 4th July 1868.

Finally, in the cases in which the Umpire made awards without having any assurance that there were proper parties living entitled to be the recipients thereof, and leaving it to the U. S. Government to ascertain who were the parties entitled to receive them, if any, it is possible, undoubtdly, that there be none to claim them with any perfect right, and, in this case, those awards shall have no effect through an impossibility, and not by opposition of the Mexican Government, who has done nothing else but express the expectation that the amount unpaid for this reason shall be returned to it, as the Convention was entered into only in be half of private individuals; and that the U. S. Government will find it just to make such a deduction, when on being made by Mexico the last installment it may appear

that no persons with legitimate rights are to be found to receive the abovementioned awards:

But if such a hope should not be realised, it will not prevent the Mexican Government from satisfying the amount of these awards, preferring always to bear this burden, rather than to give cause of being suspected of a determination to elude, even in small parts, the fulfilment of its engagements.

Be kind enough to bring into the notice of the Secretary of State all the points contained in this note, and even to leave with him a copy of it, should he request it so.

Receive the assurances of my consideration.

[Signed.]
VALLARTA.

To the Envoy Extraordinary and Minister Plenipotentiary of Mexico in the U. S. of A.

Washington D. C.

[A true copy.]

Mexico 7th. may 1877.

JOSE FERNANDEZ,
[Chief Clerk.]

FROM THE "NEW YORK HERALD" OF THE 20th. OF FEBRUARY, 1877.

FROM OUR REGULAR CORRESPONDENT.

Washington, Feb. 19 1877.

SIR EDWARD THORNTON AND HIS DEFENCE OF THE PROCEEDINGS IN THE MEXICAN COMMISSION—HE MAKES A DENIAL OF ALL CHARGES OF FAVORITISM.

There is no truth whatever in the report that a diplomatic complication prejudicial to sir Edward Thornton is likely to arise out of his decision, as Umpire of the Mexican Commission, in the matter of the claim of Benjamin Weil for nearly \$500,000 which he awarded in favor of the claimant according to testimony which had been submitted to the Commission. On the contrary SIR EDWARD EXPRESSES THE HOPE THAT THE CLAIM WHICH HE WAS CONSTRAINED BY THE TESTIMONY TO AWARD TO WEIL, MAY BE SET ASIDE—EVENTUALLY, BECAUSE HE IS CONVINCED BY EVIDENCE SUBMITTED SUBSEQUENT TO THE SESSION OF THE COMMISSION, THAT THE CLAIM WAS IMPROPER, IF NOT FRAUDULENT. This secondary testimony he could not, however, take into consideration. He was bound to render his decision as Umpire only upon the original testimony, which was strongly in the claimant's favor. Sir Edward having had his attention called this evening to this matter and to the

case of Alfred A. Green, he protested against the imputation which had been put upon his decisions and action in connection therewith. So far as the case of Green is concerned, he says that there is nothing in it and that he has notified the claimant of this. There is nothing in it whatever, and he thinks it is not worth while to say anything about it.

Speaking generally about the character of the business which he has had to perform in the discharge of his duty as referee, Sir Edward added that in the vast amount of papers and evidence which he had to go over IT WAS IMPOSSIBLE, OF COURSE, TO GUARD AGAINST FRAUDS, AND MORE PARTICULARLY PERJURY. He used the utmost care and precaution in going over the multiplicity of details and facts, together with the questions of law, poor chirography and bad way of putting the cases—all of which were in Spanish. It must be remembered that he took the cases just as they were made up by the Commissioners, and investigated them according to the standard of equity, justice and common sense. During three years past he has examined 464 cases, as Umpire from an original aggregate of claims amounting in money to over \$400,000,000. He had reduced the sum total to about \$3,500,000. The task had been no slight one. He had gone over every case himself from the papers. He had heard no oral argument but had required parties to submit them in writing. So far as any feeling on his part against American citizens is concerned he pronounced such an allegation simply absurd, because in the settlement of claims he has been obliged to decide against Mexicans. But with all the care, caution and conscientiousness which he has been able to exercise HE HAS NO DOUBT THERE HAVE BEEN PERJURY AND MISREPRESENTATION, which, of course, he could not guard against, as that was a department of the subject which was to be passed

upon by the Commissioners. As to the case of Weil, claiming nearly \$ 500,000, HE SHOULD BE GLAD TO SEE IT RE-OPENED, RECONSIDERED OR DEFEATED, BECAUSE IT BEARS ON ITS FACE IN THE ADDITIONAL SUBSEQUENT PROOF SUBMITTED TO HIM THE EVIDENCES OF GREAT FRAUD, IF NOT PERJURY, AND HE THINKS AND HE HOPES STEPS WILL BE TAKEN BY THE PROPER AUTHORITIES AGAINST IT ACCORDINGLY. He has not been in a position by a mere examination and judicial investigation of the papers before him to decide where perjury has existed until it was subsequently brought to his notice, but in the Weil case, if it is, as, HE HAS REASON TO BELIEVE, A FRAUDULENT CASE, HE HOPES IT WILL BE UPSET. So far as any taint of corruption or bribery is concerned the insinuation is rejected with the utmost indignation. He refused to receive anything from either the Mexican or American Governments in consideration of his services, although he has had an untold amount of labor which he would not on any account undertake again of his own free will. He has even used his own stationery, which is something, to say nothing of his services. In reference to the aspersions made upon his clerk's integrity he repels the allusions as utterly unfounded and impossible, for the reason that it was one of his secretaries of the Legation, the Hon. Henry Le Poer Trench, who copied all his decisions, about which no one knew anything but himself until they were all made out, when they were simply copied by the Secretary. No one but the British Minister had access to them to know what they would be, and hence there could be no connivance at fraud or bribery. The assertion is simply preposterous. Besides being one of the most exalted of men in his integrity Mr. Le Poer Trench is of a distinguished family in Ireland, and of great wealth, to which reference Sir Edward Thornton added that he

would depend upon him to the very last degree and put his hand in the fire for him.

It is only proper to say in this connection that Sir Edward Thornton, as the dean of the diplomatic corps, has always held the most agreeable relations with our government and the American people, officially and socially here.

The case to be submitted to the Judiciary Committee of the Senate in opposition to the claim of Benjamin Weil, will be argued by General James E. Slaughter, of Mobile, who says that he will make the following showing of facts:—

The claimant is a Frenchman who resided in Louisiana before and during the war in the year 1864. Weil claims to have bought in Texas and transported across the Rio Grande for shipment at Matamoros a convoy of 300 wagonloads of cotton. On the Mexican side the cotton was captured and taken from him by Cortina's band of guerillas. The loss he suffered by this robbery, including interest to 1876, amounted to nearly \$500,000. He proved the claim to the satisfaction of the American Commissioner and Sir Edward Thornton, and was awarded its amount. and under the provisions of the bill pending in Congress, would receive his *pro rata* of the \$300,000 which Mexico sent to Washington a few weeks ago as the first instalment of her settlement of all claims adverse to her.

General Slaughter will oppose the allowance to Weil on the several grounds following:—He charges that Weil was not a loyal citizen of the United States, and that the shipment of cotton in the time of the war was in contravention of law. Therefore Weil had no standing before the Commission. He says that he will show from the books and papers of Weil that no such transaction as the purchase and transportation of so immense an amount of cotton is recorded by him. He will cite bankruptcy proceedings, involving the business partners of Weil to show, from

affidavits of these partners that they knew of no such transaction, and that the terms of copartnership, which covered the time of the transaction expressly forbade any independent operation or speculation on the part of individuals of the firm. *He will also endeavor to make it evident, from the geographical nature of the country said to have been traversed by the convoy, that it would have been impossible for such an expedition to have taken the route on which the robbery is said to have been effected.* The claim will be stoutly defended by the lawyers of Mrs: Weil, who are here in force. The original claimant is said to be now a lunatic in confinement in France. His interest is prosecuted by his wife.»

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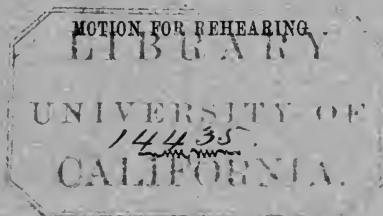
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CLAIM
OF "LA ABRA MINING C^o" VS. MEXICO

Nº 489

Award by the Umpire of the United States & Mexican Claims Commission

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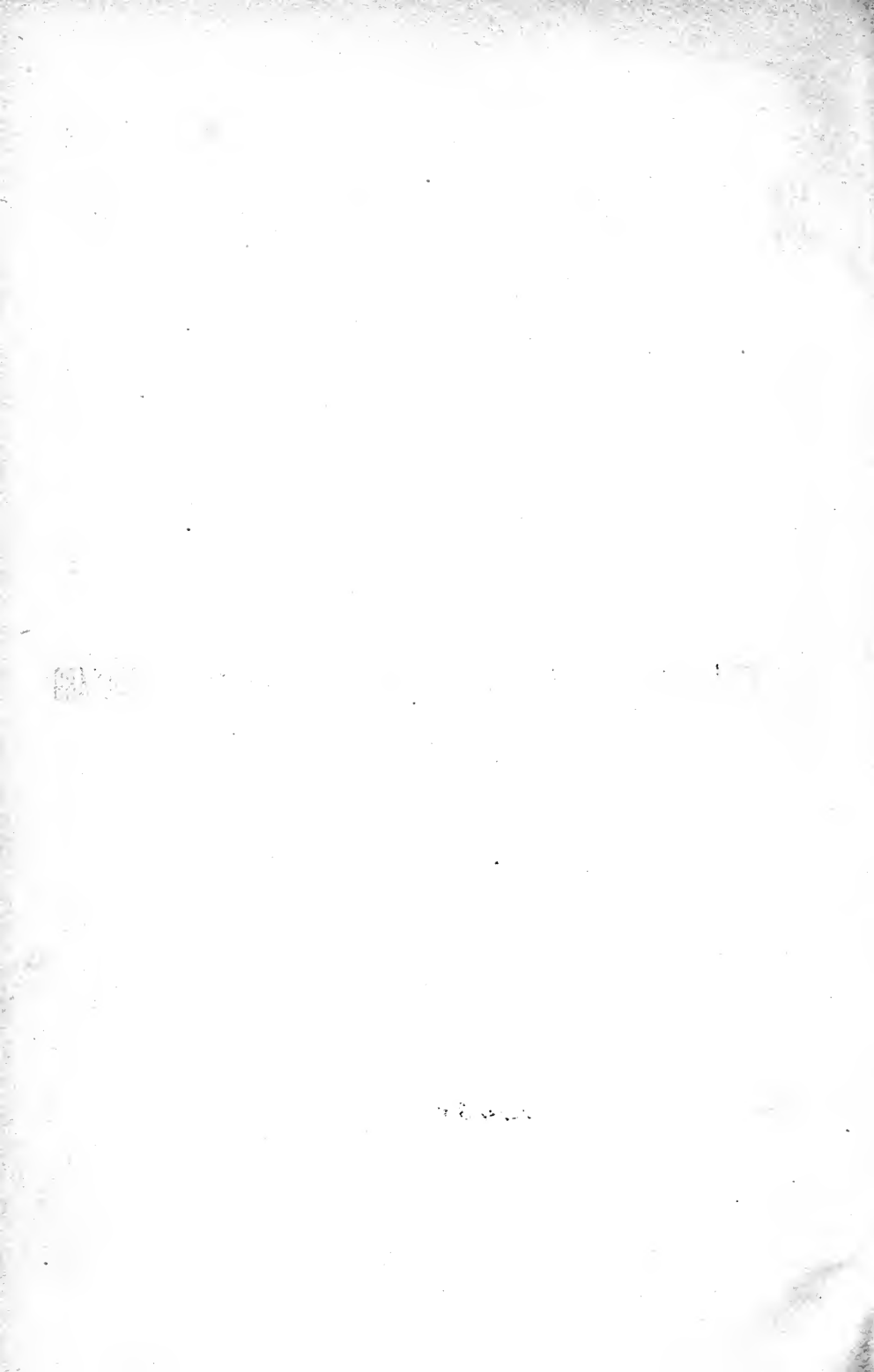


TRANSLATION BY J. CARLOS MEXIA
MEXICAN SECRETARY OF SAID COMMISSION

MEXICO
GOVERNMENT PRINTING OFFICE
1877



CLAIM OF "LA ABRA MINING Co." VS. MEXICO—No. 489



CLAIM
OF "LA ABRA MINING C^o" VS: MEXICO

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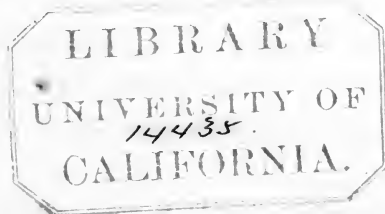
Award by the Umpire of the United States & Mexican Claims Commission,

AND

MOTION FOR REHEARING

TRANSLATION BY J. CARLOS MEXIA

• MEXICAN SECRETARY OF SAID COMMISSION



MEXICO
GOVERNMENT PRINTING OFFICE
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"LA ABRA" MINING CO. VS. MEXICO No 487.

AWARD OF THE UMPIRE.

With reference to the case of «La Abra Silver Mining Co. vs. Mexico» n° 489, the Umpire is fully satisfied and cannot doubt that the Company is entitled to be considered a corporation, or Company of citizens of the United States in accordance with the terms of the Convention of July 4, 1868, *having been duly chartered in conformity with the laws of the State of New York.*

He is also of opinion that the enterprise upon which the claimants entered, of purchasing, denouncing and working certain mines in the State of Durango, in Mexico, was a serious and honest business transaction on their part, and that there was nothing rash, deceitful or fraudulent in it, but that it was engaged in with the sole intention of carrying out legitimate mining operations.

There is no doubt that the Mexican Government was very desirous of attracting foreigners to the Republic, and of inducing them to bring their capital into it and raising up industrial establishments of all kinds. With this view it issued proclamations en-

couraging the immigration of foreigners and promising them certain advantages and full protection. It cannot be denied that the claimants were justified in placing confidence in these promises. They complain, however, that the local authorities of the District in which their mines and works connected with them were situated, did not fulfil the engagements entered into by their Government, but, on the contrary, behaved towards them in an unfriendly and hostile manner. The ground of their claim is that *these hostilities were carried to such an extent, that they were finally compelled to abandon their mines and works and to leave the Republic.*

The evidence on the part of the claimants is, in the Umpire's opinion, of great weight; the witnesses are for the most part *highly respectable and men of intelligence*; and their testimony *bears the impress of truth*. Notwithstanding what is stated to the contrary by the witnesses produced by the defence the Umpire is constrained to believe that the local authorities at Tayoltita and San Dimas, far from affording to the claimants that protection and assistance which had been promised them by the Mexican Government, and to which they were entitled by Treaty, not only showed themselves a spirit of bitter hostility to the company, but encouraged their countrymen who were employed by the claimants, in similar behaviour, and even frightened them into refusing to work for their american employers. The conduct of these authorities was such and the *incessant annoyance* of, and *interference* with the claimants was so vexatious and unjustifiable that *the Umpire is not surprised that they considered it useless to attempt to carry on their operations*, and that for this reason, as well as from the *well grounded fear that their lives were in danger* they resolved to abandon the enterprise. These facts are not in the Umpire's opinion at all refuted or even weakened by the evidence submitted by the defense; on the contrary, he believes

that the local authorities were determined to drive the claimants out of the country.

It appears that the superintendent of the mines took such steps as he could to obtain protection from these authorities, and, finding his efforts in vain, he appealed, *through a lawyer of high character, to the highest authorities in the State*, who declined to interfere in the matter. To suppose that when so determined a spirit of hostility on the part of the local authorities, one of whom was the Jefe Político who wielded great power, and so much indifference by the State Government were displayed towards the claimants, it would have been of any avail to appeal to the Courts of Justice, would be puerile. In short, the Umpire *does not see what else, in presence of such opposition to their efforts, the claimants could do but abandon the enterprise.*

The Umpire is of opinion that the Mexican Government which, *with a spirit of liberality which does it honour, encouraged all foreigners to bring their capital into the country*, is bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities. What the amount of this compensation should be, it is very difficult to decide. The Umpire is of opinion that the claimants should be reimbursed *the amount of their expenditures* and also *the value of the ores extracted* which they were forced to abandon, with interest upon both these sums. *He cannot consent to make any award on account of prospective gains nor on account of the so-called value of the mines.*

MINING IS PROVERBIALY THE MOST UNCERTAIN OF UNDERTAKINGS; MINES OF THE VERY BEST REPUTATION AND CHARACTER SUDDENLY COME TO AN END EITHER FROM THE EXHAUSTION OF THE VEINS, OR FROM FLOODING OR FROM SOME OF THE INNUMERABLE DIFFICULTIES WHICH CROSS THE MINER'S PATH. A certain interest upon the money invested is

a much surer compensation than prospective gains; the latter are in fact the interest upon the sums invested; they may be greater or less, or none at all, and there may even be great losses of capital. To award both interest and prospective gains would be to award the same thing twice over. The so called value of the mines must depend upon the prospective gains. It may be great, small or nothing, and may be but a mere snare to lead one on to utter ruin. It is in the opinion of the Umpire equally inadmissible that the Mexican Government can be called upon to pay a value, the amount of which, even approximately, it is impossible to decide. A moderate interest on the amount invested in the business and upon the amount of the ores reduced and of those extracted and deposited at the reduction works is a further compensation which in the opinion of the Umpire that Government ought to pay.

The evidence of George C. Collins, with regard to the amount invested is clear and straightforward. He states it from subscriptions and sales of stock to be.....

<i>subscriptions and sales of stock to be.....</i>	<i>\$ 235,000 00</i>
<i>Lent and advanced.....</i>	<i>64,291 06</i>
<i>Due for rent, expenses, salaries, law expenses....</i>	<i>42,500 00</i>
	<hr/>
	<i>\$ 341,791 06</i>
	<hr/>

Any so-called «forced loans» and contributions must have been paid out of this amount. To charge them, therefore, separately is to make the same charge twice over. The Umpire takes occasion, however, here to observe that a forced contribution exacted upon a train of goods, the property of the Company, in transit from a seaport or elsewhere to the mines, is not in the nature of a forced loan. The latter should be recovered by the proper authorities, at the head quarters of the Company, and should be in the same proportion as that imposed upon all the

inhabitants of the country. The former is an arbitrary exaction which is frequently much more prejudicial than the actual money loss, on account of the detention and abstraction of goods without which the mining operations cannot proceed.

To the above mentioned amount of.\$ 341,791 06

Should be added. 17,000 00

Which is *shown* to have been the amount derived from reduced ores.

The Umpire is satisfied, from the *respectable evidence* produced, that a large quantity of *valuable* ore had been extracted from the mines and deposited at the Company's mill, and that it was there when the Superintendent was compelled, by the conduct of the local authorities, to abandon the mines and cease working them. But the Umpire is of opinion that *there is not sufficient proof, nor indeed such proof as might have been produced*, that the number of tons stated by the various witnesses were actually at the mill, or at the mines, at the time of the abandonment. *In so well regulated a business*, as the Umpire believes that it really was, he cannot doubt that *books would have been kept in which the daily extraction of ores would have been regularly noted down, and that periodical reports would have been made to the Company at New York.* NEITHER BOOKS NOR REPORTS HAVE BEEN PRODUCED, NOR HAS ANY REASON BEEN GIVEN FOR THEIR NON-PRODUCTION. The idea formed even by persons intelligent in the matter, of the quantity of a mass of ore, *must necessarily be vague and uncertain, and that of its average value still more so.* Still the Umpire is strongly of opinion that the claimants are entitled to an award upon this portion of the claim. He will put it at \$100,000. It is possible that it is much less than the *real value* of the ores; but in the *absence of sufficient documentary proof* and considering the fact that the expenses of reduction are great and sometimes even much

greater than is anticipated, he does not think that he would be justified in making a higher award. Neither should interest be allowed on this amount so soon as on the others; for the reduction of the ores would have taken time, say a year. It is not shown that the Company had received any dividends before the period of the forced abandonment of the mines, about March 20th 1868. Neither ought interest to be awarded before that date.

The Umpire, therefore, awards that there be paid by the Mexican Government, on account of the abovementioned claim the sum of *three hundred and fifty eight thousand seven hundred and ninety one Mexican Gold Dollars and six cents* (\$358.791 $\frac{6}{1000}$) with an annual interest of six per cent from March 20th 1868 to the date of the final award, and *further the sum of one hundred thousand Mexican Gold Dollars* (\$100.000 $\frac{0}{1000}$) with the same interest from March 20th 1869 to the said date of the final award. *

(Signed)

EDW. THORNTON.

Washington, December 27th 1875.»

* The interest amounted to the sum of \$ 224.250,,26 cents. up to the 31st of July 1876, which date was designated by the Umpire as that of the final award, and consequently the whole sum awarded to the claimants was \$ 683.041,,32 cents.

A. M. DOCK, NO. 489.

"LA ABRA" MINING COMPANY.

VS. MEXICO.

MOTION OF THE AGENT OF MEXICO FOR A REHEARING.

The Government of Mexico has been condemned to pay the enormous sum of \$683,041 31—capital and interest—to a company established in New York, because that company alleges that it had to stop working some rich mines on account of the hostilities of the Mexican authorities.

The foundation or grounds of such an important decision are the following:

I.

RIGHT OF CLAIMANTS TO BE COMPENSATED.

A.—That claimant must be considered as an American Company according to the Convention of July 4th 1868, because it

was chartered in conformity with the laws of the State of New York.

B.—That the enterprise of said company to purchase, denounce and work certain mines in the State of Durango, Mexico, was a formal and honest business transaction on their part, and there was nothing rash, deceitful or fraudulent in it, but that the company undertook it with the sole intention of carrying out legitimate mining operations.

C.—That there can be no doubt that the Mexican Government was very desirous of attracting foreigners to the Republic and of inducing them to bring their capitals and raising up industrial establishments of all kinds, to which effect it issued proclamations encouraging the immigration of foreigners, promising them certain advantages and full protection; and that it cannot be denied that the claimants were justified in placing confidence, in such promises.

D.—That claimants complain that the local authorities of the District where those mines were situated, did not fulfil the engagements entered into by their Government; but, on the contrary, they behaved towards them in a very unfriendly and hostile manner, the ground of this claim being that the hostilities were carried to such an extent, that claimants were obliged to abandon their mines and leave the Republic.

E.—That claimant's evidence is of great weight, the majority of their witnesses being men of respectability and intelligence; and that their testimonies bear the impress of truth.

F.—That notwithstanding the affirmations of the witnesses of the defense, we must believe that the authorities of Tayoltita and San Dimas, far from affording claimants the protection and assistance promised to them by the Mexican Government, and to which they were entitled by Treaty, not only did show a spirit of bitter hostility to the company, but encouraged some Me-

icans employed by claimants in similar behaviour and even frightened them into refusing to work for the Americans who had employed them.

G.—That the conduct of those authorities was such, and the incessant annoyance of, and interference with the claimants was so vexations and unjustifiable, that it is not surprising that they should consider useless to attempt to carry on their operations and that for this reason, as well as from the well founded fear that their lives were in danger, they resolved to abandon their enterprise.

H.—That these facts have not been refuted nor even weakened by the defensive evidence and the Umpire does believe that the local authorities were determined to drive the claimants out of the country.

I.—That the superintendent of the mines took such steps as he could to obtain protection from said authorities, and, finding vain all his efforts, appealed through a lawyer of high character to the highest authorities of the State, who declined to interfere in the matter.

J.—That there being such a decided spirit of hostility on the part of the local authorities, one of whom was the *Jefe político* who wielded great power, and so much indifference displayed by the State Government, towards the claimants, it would be puerile to suppose they could have found any remedy by applying to the Courts of justice; and that, in short, the Umpire does not see what else could have been done than to abandon the mines and enterprise.

K.—That the Mexican Government which, with a spirit of liberality which does it honour, encouraged foreigners to bring their capitals into the country, is bound to compensate the claimants for the losses which they suffered through the misconduct of the local authorities.

II.

AMOUNT OF THE COMPENSATION.

L.—That claimants must be reimbursed the amount of their expenses and the value of the ores they had already extracted and they were obliged to abandon; and interest on both these sums.

L. *bis*.—That nothing can be granted to them in the shape of prospective gains, nor for the so called value of the mines; as the working of mines is proverbially one of the most uncertain of undertakings, for even those of the very best reputation suddenly come to an end, either because the veins are exhausted, or from flooding, or from some other of the innumerable difficulties which cross the miners path.

That the pretended value of the mines must depend on the magnitude of prospective gains, these being greater, smaller, or none at all, and even change into a snare, leading to ruin.

M.—That a certain interest on the money invested is a safer compensation than prospective gains, they being really an interest on the capital employed, that may be larger, or smaller, or none whatever; as the capital itself is subject to great losses.

N.—That to grant, at the same time, both interest and prospective gains, would be to grant the same thing twice.

N. *bis*.—That it is inadmissible that the Government of Mexico should pay a sum, the real amount of which is impossible to determine, even approximately.

O.—That besides the interest on the capital invested in the enterprise, the Government must also pay it on the value of the ores reduced, and on those extracted and deposited for reduction.

P.—That the evidence of George C. Collins with regard to the amount invested is straightforward, and, according to it, said amount consisted in the following:

From subscriptions and sale of shares	\$ 235,000 00
,, loans and advances	,, 64,291 06
Due for rents, salaries and law expenses . . . ,	42,500 00
	<hr/>
	\$ 341,791 06

Q.—That whatever forced loans and taxes the Company may have paid must have been paid out of this amount, and to charge them, therefore, separately would be to make the same charge twice.

R.—That the contribution exacted upon a train of goods of the company in transit from a seaport or some other place to the mines cannot be considered in the nature of a forced loan. In order to consider it so, it would have been necessary that it should have been imposed by competent authorities at the head quarters of the Company, and in the same proportion as that imposed upon the rest of the inhabitants of the country. That contribution must be considered as an arbitrary exaction that produced more injury than the actual loss of money, on account of the detention of the goods, without which the company could not continue working the mines.

S.—That to said sum must be added \$ 17,000, amount *shown* of reduced ores.

T.—That the proof produced is satisfactory as to a large amount of valuable ores had been extracted from the mines and

deposited in the company's mill; and that it was there when the superintendent was compelled, by the acts of the local authorities, to abandon the mines and cease their work.

U.—That the proofs that the number of tons designated by several witnesses were actually at the mill or mines at the time of their abandonment, are insufficient.

V.—That in such a well regulated negotiation as the Umpire believes this to be, it cannot be doubted that books were kept, in which the daily extraction of ores were regularly annotated and that notice of the same was periodically sent to the company in New York; and, nevertheless, neither the books nor such notice have been presented, nor even an excuse for not presenting them has been alleged.

W.—That the estimate made, even by intelligent persons, about the amount of ore contained in a large mass, must necessarily be vague and uncertain, and even more so as to the average value of said ore.

X.—That still claimants are entitled to be compensated for the value of their ores, which will be fixed in \$100,000, though it is possible that this sum be less than the true value; but in default of documentary evidence and taking into consideration that the reducing expenses are considerable, sometimes greater than their estimate, it would not be justiable to grant a larger sum.

Y.—That the interest granted on this amount should not be computed from the same date of the others, because the reduction of the ores requires some time, say about one year.

Z.—That it has not been shown that the company received any dividends prior to the time of the forced abandonment of the mines, the 20th of March 1868, and, therefore, no interest should be granted before that date.

The undersigned will now proceed to make his remarks in regard to these grounds, with all due respect to the Umpire and animated by the desire not to wound his susceptibility: still he must, by way of introduction, request the Umpire to bear in mind whilst perusing this motion, that the undersigned can only accomplish his object by using that ample liberty granted to the defense in all Courts; and that in case he condescends to revise, he should not consider the decision as his own work, but rather as if written by an utter stranger; for thus only will be able to rectify its grounds, in an independent and unbiassed manner, and to render a sure judgment in an affair, that sooner or later must receive great publicity and be the object of commentaries.

I.

A

The company has been considered as a citizen of the United States, because it was chartered according to the laws of the State of New York.

Does this meet the intent of the convention of July 14th 1868?

The undersigned sustains the negative, for the following reasons:

1st Because the law of the State of New York of February 17th 1848, by virtue of which the company was chartered, could only give it a legal capacity to sue and be sued before the Courts

of the same State, but could not invest it with any rights in, or in regard to a foreign country.

2^d —It is not even a well established fact whether the privileges granted to a company by virtue of the law of one of the States, can have effect in all the States of the American Union.

3^d —No nation is bound to recognize a company intending to do bussiness in its own territory as invested with the citizenship of another, by virtue of an authorization emanating from a foreing State, and, even less, when such a State has not, by itself, international powers.

The first of these reasons need no amplification. It is enough to see the text of the law just quoted, to feel convinced that its effects are restricted to the State of New York.

We put the case even stronger and say that it is not even necessary to see said text, because it is a well known principle of public law, that no State—especially when its sovereignty is restricted by a federal compact—can extend its authorizations beyond its own territory.

The second reason is based on the following decisions of the Federal Courts of the United States:

«A controversy arose early, and was continued with great earnestness and with varying fortunes through many years, touching the capacity of corporations aggregate to sue and be sued in the Courts of the United States. The question was, whether it was necessary to ascertain who were the persons composing these bodies and to show that each one of them, individually, possessed the requisite character. It was so decided in the «Hope Insurance Company vs. Boardmen,» and the «Bank of the Uni-

ted States vs. Devan,» (5 Cranch 57, 61); and the decisions in these cases were followed—though, as we learn from a subsequent case, with great reluctance—in the «Comercial Bank of Vicksburg vs. Slocum,» (14 Peters 60.) *The decision was that a corporation could not, in its corporate capacity, be a citizen, and could not, therefore, litigate in the Courts of the United States, except in consequence of the citizenship of the individual members composing it. Each of the corporator must be a person capable of suing where the corporation was plaintiff, and of being sued where it was defendant, and, it appearing that some of them were citizens of the same State with the plaintiff, it was held that the Circuit Court had no jurisdiction.*»

«But in the case of Louisville, Cincinnati and Charleston Railroad Co. vs. Lettson [2 Howard, 497,] the Supreme Court saw fit to subject this doctrine to a severe and searching re-examination; and upon mature deliberation, declared its unanimous dissent from the narrow and inconvenient rule laid in the antecedent cases, and holding», *that a corporation created by, and doing business in a particular State, is to be deemed, to all intents and purposes as a person, although an artificial person, capable of being treated as a citizen, of that State as well as a natural person,*» and that, as such, it may, in strict conformity with the language of the section of the Judiciary Act, sue and be sued by a citizen of another State; *without regard to the citizenship of the persons of whom it is composed.* It matters not, therefore, in a suit againts a corporation, if some of the corporators are citizens of the same State with the plaintiff *provided he is a citizen of another State* than that in which the corporation is established, and where the suit must be prosecuted.

«The doctrine of this case is firmly established. It was fully discussed, re-examined and affirmed in «Marshall vs. the Baltimore and Ohio R. R.» (16 Howard, 314) and applied in the

«Lafayette Insurance Co. vs. French» (18 Howard; 404) in the «Covington Drawbridge Co. vs. Sheperd,» (20 Howard, 225) and in the «Ohio and Mississippi R. R. Co. vs. Wheeler» (1 Black 226). In the last two cases the chief Justice, in pronouncing the judgment of the Court, reviewed the antecedent cases, and reasserted the rule laid down in Lettson's case, as he did also the decision of the Court in the prior case, of the «Bank of Augusta vs. Earl.» (13 Peters, 512) *in which it was held that a corporate body can have no existence beyond the limits of the State or Sovereignty which invests it with its faculties and powers. It must dwell in the place of its creation.»*

It is, therefore, plain that there has been several decisions declaring that a corporation cannot be considered in the enjoyment of the privileges of citizenship of the United States unless all its members are entitled to it and *within the limits* of the sovereignty which invested it with its faculties.

But the most essential point is, whether the simple fact of a company being organized according to the law of one of the United States makes it binding on all the nations of the world to consider it as a citizen of the U. S. within their own territory even when no compact exists on this subject?

International law recognizes no other persons than the representatives of the nations and their citizens or subjects, individually considered.

Nobody is ever considered as a citizen or subject of a nation, simply because he is connected in interest or otherwise with persons who are such; it is necessary that he individually should bear that character, and hence his rights to the protection of alien Sovereignities.

We can assign for this, among other reasons, that it is more difficult to recognize an individual by the relations he bears

with a private corporation, than by its direct relations with the country he belongs to; and if on account of this nationality he is to enjoy certain rights in foreign countries the means of proving it, should be easy and unquestionable.

Now, a nation cannot be compelled to ascertain what requisites are established in any fraction of every other country for the organization of private corporations, and whether, in a given case, said corporations have fully complied with such requisites. It can, therefore, only be called upon to recognize as citizens or subjects of a State, those who are such according to its fundamental law, or its general laws, unless some other course is explicitly stipulated by a treaty.

And as between Mexico and the United States there has been no special stipulation making it binding to recognize as citizens, private corporations organized according to the local laws, the Government of Mexico cannot be required to recognize and treat a corporation, as a citizen of the United States, simply because this corporation was organized according to a law of the State of New York.

It cannot be considered as a citizen of the United States so far as the effects of the convention of July 4th, 1868 are concerned, even admitting that it had an unquestionable right to be so considered in the municipal Courts of the United States; because the convention when speaking of corporations and companies could not have meant those who only enjoyed *some* of the privileges of citizenship *within* the United States; but referred those only who enjoyed all of them *in conformity with international law, or with the treaties celebrated with Mexico*; and according to neither one of these causes can said company be considered as a citizen of the United States.

The constitution of the United States has laid down the rule that the Federal Congress alone can legislate in matters of cit-

izenship, and it is, therefore, illegal to consider the claiming company as invested with it, on the sole ground of a law of the State of New York.

In Mexico, and in all countries of the world, said law can produce no effect whatever: and in order that this company might be considered as an American citizen there, it ought to have been organized according to the laws of Mexico, and only then could any of its collective rights be enforced to sue and be sued.

Without this essential requisite the company has no existence either for the Government of Mexico, or this Commission; and the individuals who constitute or did constitute it can only be considered as private individuals; it being, therefore, a duty incumbent on them to state and prove their nationality, according to the order of the Commission of January 21st 1870.¹

In the present case, therefore, as in the cases of Jennings, Laughland and Co. no. 374, Rudolph Brach no. 462, Hayward and Mc Groarty no. 414, and in all others of companies organized in Mexico, no other claims can be set forth than those belonging to such members of the company as are citizens of the U. S.; and, evidently there were less reasons to recognize as a citizen of the U. S. in regard to Mexico, one company, simply because it was organized and established in New York, than

1 The Umpire, dismissing the claim no. 996 of the San Marcial Mining Co., said: «There is no proof whatever that the persons who constituted the Company and who are the claimants were citizens of the United States.»

another composed mostly of American citizens, and organized and established in Mexico.

Before closing this matter, we must remark that not one of the individuals who appear as directors or stock-holders of this company, has obeyed said order of January 21st 1870, the terms of which are absolute and without any exception, and which fulfilment is very easy indeed, as the commission has repeatedly declared.

There is certainly more reason to consider as a Mexican citizen an individual whose name appears on the registry of the national guard,—an institution to which only Mexican citizens can belong,—than to consider as American citizens every shareholder of a company, in which any person can be such; and, still, sundry Mexican claims have been dismissed for want of proof of citizenship, notwithstanding that it appeared on record that the parties interested were inscribed in said registry.

Finally, what proof is there that all and every one of recipients of the indemnification granted in this case, are American citizens? None whatever.

How must we reconcile that this circumstance should have been overlooked in the present case, when in several others against Mexico, in which small awards were granted, it was made a proviso that those who were to receive such awards should prove their American citizenship?

In deciding the case no. 232 of Hermann F. Wulff, it was said: «An award can only be made on condition that the recipient of the award shall be a citizen of the United States,» and in the case of Robert M. Couch, no. 234: «The Umpire presumes however that care *will be taken* not to pay awards to persons who are not entitled to receive them.»

We have cited these decisions only because they consign the necessity that the recipients of awards, should show that they

really are entitled to the citizenship they claim, but as to their additional form, containing provisos to be fulfilled in the future, they certainly constitute an irregularity in a Tribunal called to decide whether or not the party interested in a claim has shown to be entitled to have said claim adjudicated.

The least that can be said of that conditional form, used only in a few cases, is that it constitutes an irritating privilege.

In so many cases dismissed for want of proof of citizenship, why was not an opportunity given to claimants to amend this deficiency, especially when, in some, of them there were good reasons to believe that it was only the result of mere carelessness?

Since according to international law this company had a *legal existence* only in the State of New York, or in the States of the American Union, at best, it cannot be considered as a citizen of the United States in regard to Mexico and before this Commission; and since the parties interested in the case have not proved their citizenship individually, it must be disallowed *in toto*.



B

NATURE OF THE ENTERPRISE UNDERTAKEN BY THE COMPANY IN MEXICO.

The business of this company organized in New York in November 1865, to buy, denounce and work certain mines in the State of Durango, Mexico, is considered to be «serious and honest,» and it is declared that nothing in it was rash, deceitful or fraudulent, but that in was undertaken with the sole intent of carrying into effect *legitimate mining speculations*.

In the first place, whatever might have been this company's purpose in organizing itself in New York, the fact is that it never denounced or bought any mines at all in Durango. The denounce of some mines and the purchase of others was *individually* made by Thomas J. Bartholow and D. Garth, who afterwards sold their sights to the company, beyond the limits of the Mexican Republic: in New York. See papers nos. 10, 11 and 14.

It has not even been alleged that the company did ever make known in the District where the mines were situated their title to the ownership of such mines, by presenting it to some fonctionnay invested with public faith. In that District, therefore, and in all Mexico, the company was not the legal owner of those mines, and they continued to belong to the persons who had denounced and purchased them, whatever might have been their transactions with the company, celebrated afterwards in the city of New York.

Whether the business was a serious and honest one in regard

to Bartholow and Garth, it is, at least, a questionable point, if we recall all the circumstances of the case; but we will return to these afterwards. It will now suffice to investigate whether on the part of the company there was anything rash, or any want of prudence to undertake the speculation in the mines sold by Bartholow and Garth, or an excessive confidence placed in the intelligence and rectitude of these individuals..

We must always keep in mind, the condition of that part of the country where such a speculation was to be undertaken.

In regard to this point the undersigned will only cite some of the many decisions of this Commission, when the matter was at stake.

In the decision of the «Arco Mining Co» no. 937, for damages suffered in 1865, we read: *The Umpire does not doubt that the Company was subject to great losses, but they were due to the in-
fortunate state of war which prevailed.*»

In the case of «D. O. Shattuck et al,» no. 600: «The Umpire is not surprised that the claimants deem expedient, *considering the state of war which existed in the country*, to abandon their farm.»

In the case of Aaron Brooks, no. 898, the first Umpire of the Commission, refering to the time of the French intervention in Mexico, expressed himself in these words: «*It was an ill time to begin cotton planting.*»

How then could an enterprise undertaken at that time in the State of Durango, invaded as it was by the enemies of Mexico, be considered as prudent and discreet?

Could it be less dangerous to begin cotton planting than to undertake a mining speculation under the same circumstances?

We find the answer in the decision, of this very case: «Mining,» it is there said, «is proverbially the most uncertain of all undertaking. . . innumerable difficultties cross the miner's path,»

This being so, how could it be said that there was nothing imprudent or rash in undertaking an uncertain mining speculation, at a place, the scene then of war, which of itself brings innumerable difficulties to all kinds of enterprises?

But worse even: Geo: C. Collins the President of the Company declared: «*Before organizing the Company*, Thomas Bartholow and David T. Garth in their own behalf and in the behalf of other parties, afterwards members of it, went to Mexico, to examine and buy the mines; but the Company *never sent out a Commissioner*. These individuals did not give false information in regard to the mines, &c.»

That means that the company relied entirely on the information of Bartholow and Garth, and on their intelligence and veracity. Is there any reason to take these individuals as infallible, as it is necessary they should be, if there is nothing indiscreet in undertaking a doubtful speculation on their simple information?

Had the company sent out a scientific Commission to examine the mines thoroughly and extend afterwards a minute report of the result of their examination, describing all the circumstances of the mines, their present condition, and the difficulties that necessarily had to be overcome to make them productive: if in view of such a report, and in consequence of its being favorable, the company had undertaken the speculation, and if such a report had been properly presented to this Commission with a view of impressing on its mind the bright prospect of the enterprise, then, and only then, could the opinion be expressed with some shadow of reason that it had been undertaken not without rashness, as has been said—because such a thing can never be affirmed of mining operations, even when they might have constituted a good business, previously—but apparently, under favorable conditions.

«Mines of the best reputation and character, says the decision in this very case, suddenly come to an end, either from the exhaustion of the veins or from flooding, &c.»

If this is true in regard to all mines, what must we say of these, when Juan Castillo del Valle sold then to Bartholow and Garth, «on account of the insecurity of those deserted places distant from the superior authorities of the State, a cause which had produced some time before, the death of the vendor's brother and the abandonment of their work.»—See Castillo's second affidavit, paper no. 47.

But of all the notions we have proposed to analyze in this section, the least correct is that asserting that the working of the mines in Mexico by a company established in New York was a *legitimate* business, that is a business authorized by law.

It cannot be supposed that there was a pretension to judge of its legitimacy in view of a law of the State of New York; it would be preposterous to pretend that the legislative power of that State could reach Mexico, so that its laws would be efficacious and obligatory there.

It certainly could never occur to anybody that because a company had been organized according to a law of the State of New York to purchase lands on the Mexican frontier, the purchase, if made, was legitimate, even though forbidden, as it is, by the laws of Mexico.

No law of the State of New York, nor even of the Congress of the United States, could render an act *legitimate in Mexico*, when said act is not so according to the Mexican law.

Such a law could only produce the effect of rendering obligatory in the State of New York the contracts celebrated there, whatever might be their object in view beyond the limits of the State. Suppose for instance that Bartholow should attempt to deny in New York the personality of the company in regard

to the contract he made with them, then the company could enforce the State law; but, if this same company in order to prove in Mexico the legitimacy of the mines should plead the State law before any Mexican Court, why, it would deserve to be punished for its disrespect to the national sovereignty.

That the granting to foreigners of the right to acquire real estate is the sole and exclusive attribute of the sovereignty of a country, is a point that needs no demonstration. In some States of this country the acquisition of such property by foreigners is not legitimate. Perhaps it is not legitimate in New York, and if so, could it be legitimate throughout the Republic of Mexico *by virtue of a law of said State?*

Now, can any law of Mexico allowing a company established abroad to acquire mines in said country be cited? Certainly not, because in all the provisions granting to foreigners the permission to acquire real estate, it has always been made a proviso that they should reside within the national territory, so much so, that by the very fact of being absent two years, they forfeit the right to preserve the property acquired; this however, is not escheated, as perhaps is the case in some of the States of the American Union in regard to real estate of foreigners who die; but it is sold, and its product is delivered over to the owners, who lose all rights to be considered as such afterwards.

Article 1st of the law of Feb. 1st, 1856, reads: «All foreigners *established and residing* in the Republic, may acquire and possess real state, both in the cities and the country, *including mines* of all kinds, of metals and coal, be it by purchase, adjudication &c.

The same provision is contained in articles 1st and 2^d of the law of March 14th, 1842. Article 8th of this law, which has not been abrogated, says: «Should the foreigner, owner of real estate, be absent with his family from the Republic for over two

years, without obtaining permission from the Government, or should the property be transmitted by inheritance or otherwise to a *non-resident of the Republic*, said foreigner shall be compelled to sell it within two years, counted from the day of the absence, or of the transfer of property, as the case may be. Should he not comply, the property will be officially sold, with all the formalities of law, and of the proceeds of the sale, one tenth will be applied to the denouncer, and the remaining nine tenths shall be placed in safe deposit, subject to the call of the owner. *The same proceeding will be followed whenever it shall be proved that the owner of the estate resides abroad*, and that the person claiming to be the owner, is only such in trust of the absentee.»

It follows from what has been said in this section, that this company did not acquire in Mexico the ownership of the mines for the speculation of which it was formed, but only Bartholow and Garth individually acquired it; nor could it acquire legitimately, since it was residing abroad, and moreover, that it has not proved the favorable prospect of its enterprize, which can never be called safe under any circumstances, much less under the peculiar ones of the country, where the enterprize was to be established.

C.

OFFERS OF PROTECTION MADE BY THE MEXICAN GOVERNMENT TO FOREIGNERS WHO WOULD ESTABLISH INDUSTRIES OF ANY KIND IN THE COUNTRY.

Parties interested in this claim have said so much about proclamations inviting foreigners to immigrate to Mexico, that

though they present none of those proclamations, and do not even cite their dates with any precision, people have come to believe not only in their simple existence, but that the Government assumed to grant special protection and immunities *to all industry undertaken with foreign capital.*

And still, though the Mexican Government very sincerely desired to see laborious foreigners starting useful industries in the country, *not a single document can be shown or cited* emanating from that Government, in which, any promises were ever made to foreigners residing abroad, different from those made to resident foreigners.

As to immunities, they have only occasionally been offered to immigrants dedicated to agriculture.

The undersigned entertains some doubts as to the utility to be derived by his country from giving guarantees to all foreign capitals sent there from abroad, with a view of establishing industries with more or less grades of intelligence and discretion; but should it be useful, it might, perhaps, be charged to the Mexican Government, that they did not comprehend their true interests, but never, that they had not fulfilled their promises, *as they have never made promises to protect foreigners residing abroad.*

Bartholow and Exall, therefore, and all the other foreigners who managed the interests of the company, might claim *for themselves* that protection offered to foreigners residing in the country; but the company itself, established beyond the limits of the Mexican territory could claim nothing, absolutely nothing from Mexico, much less on the ground of promises, *that have never been made by the Mexican Government.*

D

ALLEGED CAUSE OF THE CLAIM.

It is generally said, that the authorities of the District where the mines of the company were situated, did not fulfil the engagements contracted by their Government, but acted in hostility towards the company.

When a burden of paying over three millions of dollars, is pretended to be imposed on a Nation, if it is material at all to show that justice, equity, and the principles of public law so demand it, the charges brought forth against the authorities, whose responsibility is to be enforced, ought to be made with all due precision.

What were those hostilities so vaguely mentioned?

It seems that reference is here made to the complaint of the company. «The complaint,» it is said, «that the local authorities, &c.»

Let us see then what were the complaints made in the memorial of the claim.

«These—the authorities—always maintained an intense and constant prejudice against the Americans, participating in it not only the civil and military authorities, but also the populace of Mexico, directing their ill-will especially against those who were dedicated in working the mines, and consequently, against the company they represented.»

«This prejudice was still exasperated by the belief that the United States intended to annex the States of Durango, Sinaloa and others, and it was commonly said and repeated by every

body, that this company had been established and was working to obtain that object. The company's property and the lives of its employees, were threatened by the authorities and the people. The superintendent of the company was arrested without cause, and without having committed any crime or fault; and without submitting him to trial, nor allowing him to make his defence, he was kept in prison and fined. And when said superintendent applied to the civil and military authorities of Durango and Sinaloa for protection, his endeavors were rejected with asperity.»

«Some acts of violence were also committed against the effects and property of the company and against its employees, counting on the support and stimulated by the acts of the authorities; and the employees of the company were thereby so much alarmed, that it became impossible to keep them at their work. The authorities frequently seized the mule trains of the company, loaded with provisions, and appropriated to their private benefit said animals and provisions. They likewise despoiled the company of a large amount of ores extracted from the mines, and to that effect, they threatened the employees who resisted such a spoliation. Matters came finally to such a straight, that one of the company's employees, in charge of the mule trains was publicly assassinated by the liberal troops, and the animals and load captured, and this act was the object of the praise and eulogy of the Mexican Officers. The authorities of San Dimas entertained the manifest purpose of driving the company and all the Americans from the place, and to take their property.»

«The memorialist adds: that one of the determining motives of said persecution, was to compel the company to leave the country, and to allow the Mexicans to acquire the valuable property of the company. And in consequence of these persecutions, annoyance, outrages and insecurity, it became impossible

for the company to work the mines, and no other course was left to it, but to abandon said mines, as heretofore explained »

The causes therefore alleged by claimants were the following:

1st Prejudice or ill-will of the authorities against Americans in general, and against the company in particular.

2^d Threats against the company's property, and against the lives of the employees.

3^d False imprisonment of the superintendent.

4th Harsh rejection of the application for relief for the superintendent, by the superior authorities of Durango and Sinaloa, when he occurred to them for protection.

5th Acts of violence against the company's property and its employees, supported and stimulated by the authorities.

6th Frequent seizure by the authorities of the mule-trains of the company, loaded with provisions.

7th Spoliation of the company's ores in large amounts.

8th The assassination of an employee of the company by the liberal troops—Their name is not mentioned, nor any detail given.

9th Manifest design of the authorities to expel the company from the country.

It is seen that *not one* of these causes was specified in the memorial with that precision necessary in a claim.

Neither this Commission nor any other municipal Court can pass judgment on mere intentions or acts of the will, but they can only do it, when facts are stated. If the persons invested with public authority in the District of San Dimas, actuated by fears, more or less founded that the agents of the company were conspiring against the integrity of the Mexican territory, did not sympathize with them, this circumstance cannot constitute of itself a good ground for a trial, so long as that want of sympathy did not pass into acts.

To fine a nation because its citizens harbored some fear that some individuals of another country, having already grabbed from it one half of its territory, and entertaining, as no body can deny ambitious aspirations to increase its own to the detriment of its neighbors, would be the greatest injustice

It is certainly to be desired that between Mexicans and Americans the greatest harmony should exist; but whilst said aspirations are not only maintained but are openly shown, it cannot be expected that the threatened shall love and sympathize with the threatners, and among the masses of the people, at least, who have no means of discriminating between such aspirations and the prevailing spirit of the thinking men of this country, but have only had a chance to come in contact with the adventurers who have left it for the Mexican States of the frontier and the Pacific coast there to promote annexation, either by filibusterism or under cover of immigration, or of mining speculation, the ill-will they profess to all Americans, whom they see undertaking more or less deceitful schemes cannot be even matter of censure.

The charges of threats on the part of the authorities, acts of violence directed or stimulated by them, seizure of trains, assassination of one of the company's employees, and the purpose of expelling its agents from the country, made in a vague manner, without any precision as to dates and without stating minutely the facts, are as deficient, as the general imputations of hostilities, and of false imprisonment of the superintendent of the company, neglecting to give his name or any other data that could enable us to determine the event and cannot be esteemed a sufficient ground on which to base a claim.

The American Commissioner of whom nothing could be said with less foundation than that he carried his exigencies too far when parties interested in claims *against* Mexico were involved

in delivering his opinion in the case of the «Arco Mining Company,» no. 937 and alluding to the requirements to be fulfilled in presenting claims before this Commission, said:

«*The least claimant should have done was to have stated in the memorial what taxes and forced loans were levied, on whom and at what date, and what quantity and description of property and the value thereof. This information we were entitled to have in the printed statement of the case.*»

Had he acted in this case consistently with his theory, he would not have taken the claim of the Abra Company into consideration, because it is still more vague and indefinite than the Arco claim, in which at least it was stated that a body of Mexican troops camped near the mines and carried from them powder, implements, &c. This is certainly more definite than the seizures of trains with provisions, without stating when and where they were made, and yet the Commissioner deemed that inculcation to be an «*indefinite charge,*» and refused to take it into consideration.

But the absolute want of precision is not the greatest defect in this case; it has still a greater one, to which no attention whatever has been paid, *viz:* the time when it was originally initiated.

The undersigned does not propose to examine this point under its legal aspect, but simply on the ground of common sense. Leaving aside that the claim was not presented within the term specified by the Convention, and that when it was presented, it did not even appear in the vague shape we now find it in the memorial, but in that of a simple notice given in a letter dated March 18th, 1870, the undersigned calls the attention of all impartial readers of this argument, to the singular fact of a company—an American company at that who compelled to abandon a brilliant speculation when there were millions in

it—should abstain absolutely during two years from taking any step towards getting the indemnification to which it now pretends to be entitled.

How did this Company abandon the speculation?

George C. Collins, its President ever since October 23^d, 1866, has testified that «he had no knowledge of the circumstances causing the abandonment,» *and that after it took place «nobody has ever given any account of the mines to the company,» whose interests were in charge of Charles Exall.*

Here we have a company established in New York, investing hundreds of thousands of dollars in an enterprize, in charge of a superintendent: that this superintendent abandons it without giving any account whatever, that two years are allowed to elapse, and only at the end of them, it occurs to the company to enquire into the circumstances that had caused the abandonment, *in order to lay all the responsibility on the Mexican Government.*

Is this the proper course for sensible persons, business men, and American speculators to follow?

The undersigned entertains no fear of being accused of selecting a partial judge, to his part, when he points to the American Commissioner to decide this question of common sense.

In the case of «James Ford vs. Mexico» no. 851 the question at issue was the seizure by Mexican troops of merchandize amounting to \$ 105,000; said Commissioner decided it in the following manner:

«Thus Ford was robbed of property of the value of \$ 105,000.»

«*He never complained of it to the authorities of his own country, or of Mexico, but patiently sat down under a loss of that magnitude until the 30th of May 1870, when he telegraphed to a Mr. Giddings in this city to file his claim, &c.*»

On the strong presumption, not to say full conviction, that such carelessness suggested of untruthfulness as to the alleged

cause of the claim, the Commissioner could not help rejecting it with disdain.

What then can we say of a company managed by New York merchants, who having lost, not a hundred thousand, but millions of dollars, as they pretend, heard with perfect impassibility of such an enormous loss, without even procuring to know the cause of the disaster?

It is said that the speculation was abandoned on March the 20th 1868, and the first written report that the company ever received of the cause of the abandonment—this is at least the oldest date presented—was the affidavit of Charles H. Exall, produced in New York, December 20th, 1869, one year and ten months after the abandonment had occurred.

It is said in this affidavit that it was determined upon by reason of the annoyances caused by the citizens, and by the civil and military authorities; these are mentioned in a way less vague than in the memorial, and the *imperial troops* are likewise designated as authors of the injuries; but not a word is said about the formalities and manner in which the abandonment was effected.

This same Exall in another affidavit in behalf of the company, June 11th 1874, says that his departure from the place of the mines, was sudden and in secret, for fear of losing his life, because the day before Macario Olvera, the Prefect, told him that it would be better for him to abandon the mines, as he, the Prefect, was unable to defend the company against public sentiment, and that the Mexican residents of the District were determined *not to remain any longer out of work &c.*

Let us suppose for a moment that all this was true; what would any man of common sense have done in Exall's place? What should any honest man in charge of interests of such magnitude, have done?

Nobody evidently who considers himself worthy of this title would hesitate, to answer that above all, Exall should have consigned in a formal document the state in which those interests were left, and the cause that had determined him to abandon them; and supposing he was unable to find one single honest man in the place he was about to leave, willing to authorize with his signature such a document, as soon as he reached some other place where his life was safe, his first care should have been to produce such a document.

Exall has not said where did he go to, after leaving the mines; but the witness Antonio Peña, a resident of Mazatlan; said that he lent Exall there, \$250 to pay his passage to the United States, adding that he had not been reimbursed of that amount.

This proves two things: 1st, that the last superintendent to the mines, after their abandonment, went to Mazatlan: 2^d, that he then had no funds, and 3^d, that the funds of the company were also exhausted.

Now, what could have prevented Exall in Mazatlan to enter a protest or to produce such a document as we have been referring to?

All this is very improbable, and is rejected by common sense.

Let any honest man put himself in Exall's place, and compare the course of action he would have followed, supposing true the inculpatations made against the authorities of Mexico with that followed by Exall, who can by no means be considered an idiot, and the forcible conclusion can be no other than that there are no signs of truthfulness in the tardy story of the causes of the abandonment.

When a person has a ground for complaint against some subordinate authority of a foreign country where his own maintains a representative, allowing that for want of confidence in the higher authorities of the country he should not apply to them for

redress—a course that ought never to be approved—nothing more natural and proper than to present his complaint to the representative of his own country.

If the speculation had actually failed in consequence of the hostilities of the local authorities when in itself it presented a good prospect, Exall would not likely have abandoned it without first soliciting through the nearest Consul and the Minister of his own country, such protection as was necessary to counteract those hostilities.

And if the representatives of the United States did not inspire him with more confidence than the Superior Authorities of Mexico, what pretext can he invoke for not having rendered a justified account of the abandonment of the mines to the Company, who had placed their interests under his charge? And if the Company did not compel him to fulfil this duty, or, if he did render the account soon after the occurrence, and it has not been presented to this Commission because of its being adverse to the interest of the company, then a person must either be entirely bent on seeing such pretensions succeed, or opposed to common sense, in order to admit as the determining cause of the abandonment, acts of hostility now for the first time brought to light after the lapse of so long a period, and to suppose that the speculation would have been a perfect success had said alleged acts not intervened.

E

NATURE OF CLAIMANT'S EVIDENCE.

The admission of this evidence on the opinion formed of the respectability and intelligence of the majority of the persons whose testimonies constitute it, and of the truth believed to be found in them, is the result of a purely personal appreciation, that the undersigned can hardly expect to see modified on account of this observations.

The witnesses considered as respectable, are unworthy of any faith in the undersigned's opinion, on account of the notorious falsehoods found in their testimonies, their manifest partiality in favor of the company, and of the means employed by some of them to further the claim.

In the undersigned's judgment those witnesses cannot deserve credit «who do not tell the truth, all the truth and only the truth,» according to the form used by the English law in taking testimonies, and witnesses are to be judged according to the well known rule in law: *bonum ex integra causa; malum ex quocumque defectu.*

The undersigned therefore cannot consider as a respectable witness John Cole, who filed before this commission a claim false in most of its parts at least, nor can he find any signs of truthfulness in a testimony in which the sole item of improvements in the mines, are pushed to ever half a million of dollars, and in which it is said that *all* the employees were ejected, when *the only one alleged to have been ejected, was Exall.*

Neither can be consider as a respectable witness Alfred

Green, the pretended liberator of Mexico, who tried to defraud that nation by presenting a fraudulent claim.

Nor can he admit Exall the superintendent who abandoned the interests placed under his care, and never gave an account of them, as such.

As to John C. Brissel, the facts that his knowledge is derived from mere hearsay, and that he, being an American, should have resided at the very place from whence, it is alleged, the company was expelled on account of *hatred to the Americans* and that during the same month of March 1868, in which the pretended expulsion took place, are enough to discard his testimony.

Neither was William H. Smith an eye-witness of the causes that determined the abandonment of the mines, and he too, an American, resided in the District of San Dimas working at some mines, and yet was not expelled.

John C. Cryder, who calls himself the second Superintendent of the Guadalupe mines, does not pretend to have been expelled on account of hatred to the Americans. He was not an eye-witness.

Juan Castillo del Valle, the one who sold the mines, has given depositions in favor of the company and for the defense; they differ as to the amount of the products of the mines, but not as to the causes of their abandonment as stated by Exall.

Nobody will ever consider Matias Avalos, who has given conflicting testimonies on both sides, and who says that he can neither read nor write, as a respectable and intelligence witness.

William Clark, John Cole's partner, pretends to have paid in behalf of the Company a loan of \$ 600, for which no voucher has ever been filed. He must indeed be considered very respectable if his simple word is to be credited.

Francis Dana, an ex-soldier in the service of Mexico, a wit-

ness in many a claim against that country and the interpreter of the individual who forged the proofs of this claim, limits his exertions to recommending the merits of said proofs; in the production of which he took a part.

Charles Boutier, another claimant against Mexico is a witness by hear-say as to the principal part of the claim.

James or Santiago Granger, who has given his testimony in the claim, *pro and con*, and who being in charge of the company's property, sold a part of it, is far from deserving the appellation of a respectable witness.

As to Jose Maria Loaiza, of whose deposition Carlos F. Galan was the *translator*, the undersigned has the following reason not to respect him.

He filed before this commission a complaint against the United States, of which Galan was counsel, through the agency of Alonzo A. Adams—the same individual who went to Durango and Sinaloa to forge proofs in this claim—pretending that he should be indemnified in a large amount because a young woman, whom he tried to pass before this commission as his wife, was hung in California by a mob, *from which, though, he well knew how to make his own escape.*

The undersigned received from his Government proofs as to the falsehood of the complaint, where upon he discarded it, notwithstanding that Adams gave him some proofs to sustain it.

It appears that George C. Collins, the President of the Company, is one of the witnesses considered most respectable, since with the sole foundation of his simple testimony the amount of the company's capital, and the amount of the loans made by witness, and of the outstanding debts, have been considered as proved.

But though the witness declared he had no knowledge of the

causes of the abandonment of the mines, still he empowered those who have been pulling the wires in this claim, to charge it to the Mexican Government. Such a course is certainly unworthy of a respectable person.

If he believed that he would assume no responsibility by saying he had no knowledge of the causes of the abandonment, he simply imitated Pontius Pilate's example of washing his hands amongst the innocents.

Collins, moreover, is one of the most interested in the claim, because, should it fail, how would he ever be reimbursed of the sums he invested in the unlucky mining scheme? He therefore, did not speak the truth when saying he had no interest in the claim.

Francisco Gamboa, one of the witnesses through whom Carlos F. Galan knew confidentially of the threats made by the Mexican authorities, only speaks of a contract for the transportation of provisions entered into between himself and the company, and which contract could not be carried into effect on account of the abandonment of the mines; he does not express any cause whatever for it.

Isaac Sisson, U. S. Consul at Mazatlan, whose course in claims against Mexico cannot but be censured by those who have had a chance to know of it, as the Umpire, certifies, that being once in a store, Adams went in and read in a loud voice Antonio Peña's testimony, stating the advances of money that he had made to the company, and that an old Mexican who heard the reading and that the document was to be sent on to Washington, snatched it from his hands, and tore it to pieces, and immediatly escaped, and that this old man's name could never be ascertained though both Adams and the consul did their best to find it out.

Notwithstanding the formal style in which this statement is

certified to, with a view of showing the pains taken by the Mexicans to prevent any testimonies being presented against their country, it can hardly be believed that in a place like Mazatlan it should be impossible to ascertain the name of the author of such a mischief; but let us admit it to be true; it can only prove Adam's indiscreetness in going about boasting of his success as to the steps he had taken in favor of the company, and the disgust that falsehoods are apt to inspire when published in the presence of people who can detect them. Perhaps in Mazatlan, Peña's assertion, that he had supplied money to the company in amounts greater than the whole stock he actually managed in his mercantile establishment, was considered simply scandalous, as undoubtedly when other testimonies in which still grosser falsehoods are stamped to sustain this bogus claim, come to be published, they will cause surprise and indignation, not in Mazatlan and Durango alone, but all over the Republic of Mexico.

It was the good luck of claimants, that Adams did not read out loud or publish in Mazatlan,—other testimonies more important still than Peña's; and it has been one of the principal disadvantages at which Mexico has stood before this Commission, that only the memorials have been known and served there to prepare the defensive evidence, particularly in cases like the present, where it seems a special study has been made not to precise any data.

And since we have mentioned the alleged dissatisfaction of the Mexicans, at the testimonies adverse to their country, it may be opportune to remark that those Mexicans who condescended to sign testimonies of this kind, must have had some special reason to do so, as, unless we suppose them animated by the highest sentiment of love of justice, capable of overpowering their patriotism or the interest felt in the commonweal of their country, we must admit that such testimonies were not

desinterested, but that the so-called General Adams knew well how to employ such means as are efficacious with people deprived of the most natural sentiments of the human heart.

We must, therefore, either exalt those witness to heroism, or else humble them unto dust: erect an altar to their abnegation and that prompted them to sacrifice the interests, if not the honor, of their country, or look on them with that supreme indifference well deserved by those who sell their country for miserable personal interests.

But the witnesses Galan, Peña, Gamboa, Loaiza, Avalos and the lawyer Chavarria are very far from appearing surrounded with the aureola of heroic virtues, and the undersigned cannot conceive under what title can they deserve any respect.

Following our judgment of the witnesses by the order of their testimonies on file, we stumble with that of Nicolas Ally, who prompted by his conscience, thought it his duty to reveal to Adams that á Dr. Rapp had tried to buy him into defeating this claim. According to this conscientious witness, Rapp had fallen out with Adams on account of political questions, and had spoked in a manner scurrilous to the company and favorable to the defense of Mexico. Of course the matter originated with Rapp, without any provocation on the part of Adams; but let this be as it may, the fact is that Rapp, not satisfied with insulting the peaceful Adams, proposed to destroy his honest efforts and invited Alley to help him in the undertaking, in which there was plenty of money—«millions in it, as colonel Sellers would say—because the Mexican authorities were determined to fight and defeat the claim, and to pay liberally if this was accomplished. But this is not all; Rapp pretended that Alley should declare that Adams had tried to buy him over, to give his testimony in favor of the claim, and this was repugnant to Alley, who had always considered Adam's course in the matter as very

honorable. Rapp enjoined secrecy on Alley who gave him no answer, but went that very day to Adams and advised him of Rapp's scheme.

The undersigned would consider as an insult to the Umpire if he were to place Ally among the witnesses considered as respectable.

The man who debases himself to such an extreme, if not of forging a slander, but of propagating such tales, deserves to be despised by all honest people.

If those tales prove anything at all it is that Adam's conduct needed some vindication.

Whoever may read what Adams forged in self defense cannot help receiving an impression entirely adverse to this individual.

Pedro Echeguren, a spaniard who had for many years resided in Mazatlan, where he made a fortune, speaks in favorable terms of the Company, of the little or no protection given to foreigners in the States of Sinaloa and Durango, referring exclusively to exactions and forced loans, and complaining of the amount of money his house had had to pay under this title in many years, though, he never, of course, alludes to his gains, without which, he evidently would not have continued so long the business; but in order to form an opinion of this individual, it is enough to read the words of another deposition he gave in the claim of Benjamin H. Wyman, n^o 911—paper n^o 17.

«That he knows, and it was notorious that all the authorities respected the persons and properties of foreigners, *and particularly of the Americans*, and he, being a foreigner, had never suffered in his property and interests other annoyances than those that are an inevitable consequence of political disturbances and hazards of war, and no injuries whatsoever from international acts.»

By this phrase it seems that he meant injuries which might give rise to international claims.

Can it now be said that when he tried to sustain this claim with his testimony, referring to loans and exactions, and difficulties caused by the war, he did not declare falsely in the matter?

But if all this, notwithstanding, Echeguren is to be held as a respectable witness, his testimony must not be mistaken for that of others in which, the alleged causes for the abandonment of the mines are specified, since on this point, he simply says: «that he did not think it prudent nor safe for the Company to intend to undertake again their mining operations in Tayoltita, nor to go into any expense there, after 1868, when they abandoned their work *on account of the circumstances.*» To what circumstances does he refer to? May it not be to the circumstances of the speculation itself, to the quality of the mines, to the amount of the expenditure, &c., &c.?

The next witness whose respectability we must examine, is the Mexican Marcos Mora, Ex-Prefect of the District of San Dimas. This man, moved, as it seems, by the remorse of a scrupulous but sluggish conscience, declares that the authorities of that District expressed themselves adversely to the Abra Company, and decided to expel them, *«although it cannot be said that they acted the same way in regard to other companies,*» and that he never heard that the employees worked for the annexation of Mexican territory to the United States,» which proves, either that he was deaf, or that Exall and all the rest, who, with or without reason declared that this was a charge generally made against them, lied.

But the most curious thing is that this same witness says in this very same deposition that the Governor of the State of Durango, Señor Ortiz de Zarate, applied to him for information in regard to the Company; that he gave it in terms very unfavor-

able to the Company, stating that «it was composed of Americans who like all foreigners, were trying to ruin Mexico,» and that it was precisely on account of this information that said Governor denied the protection he was asked for.

A villain that in this manner acknowledges himself as the principal cause of this claim, and who contradicts himself with so little delicacy, can only deserve the most profound and utter contempt.

Let us next see what opinion can we form of the lawyer Jesus Chavarria, another Mexican who pretends to make us believe that he constituted himself in the accuser or denouncer of the authorities of his own country, simply for his love of justice, without any personal interest in the claim of the company *who is his client, and paid or owe, him fees for his services.*

This great apostle of truth says that the company employed him to solicit the protection of the Government of the State of Durango in order to put a stop to the robberies and outrages it was a victim to, in Tayoltita; and though he repeatedly asked for said protection, it was without any result, as the Governor answered that he did not wish to meddle in private matters.

Exall, paraphrasing freely this answer, related that Ortiz de Zárate had said to Chavarria that he was determined to drive all the Americans from that part of Mexico. Perhaps Mexico may be thankful that Chavarria did not *carry so far his love of truth* as to say *the whole truth* in relating this answer, but he left Exall to do it, rendering the omission palpable: which of the two said an wntruth?

But the one thing in which the justified Chavarria found no difficulty as win estimating the value of the mines of the company in five millions of dollars, and he did not hesitate either in testfying as to all the hostilities against the company, as if he had been an eye-iwtness to them.

These circumstances show that if Chavarria's respectability is more than doubtful his want of intelligence as a lawyer is unquestionable.

The least that could be expected of him is that he should have known the fundamental law of his own country, and the manner it has established to enforce the rights it guarantees.

This instrument in its 8th article, declares inviolable the right of petition respectfully exercised *by writing*, and that to every petition there shall be a corresponding resolution, which shall be communicated to the party interested.

This first-rate lawyer ought then to have started by presenting *in writing* his application for protection to the Governor. If he did so, but the resolution was not communicated to him in writing, he ought to have resorted to the corresponding remedy which he would have found in article 101 of the constitution, and in the writ called *«amparo.»* If the District judge paid no attention to his complaint, he should have applied to the circuit court, and if even there it was disregarded, he should have appealed to the Supreme Court of the nation. It would have been absolutely impossible that of all these efforts he should have failed to get some documentary evidence to present.

Without some document of the kind no court can believe upon his word a lawyer pretending to have done all he could and ought to have done in the interest of his client, nor will common sense recognize him as an intelligent lawyer.

After Chavarria, comes Charles B. Dahlgren who to show us his respectability, begins by telling us that he is the son of the late Admiral Dahlgren, and a consul of the United States in Durango.

All this, though, can be of little service to the company, because deponent refers to the state of the mines and property

after the abandonment, and he speaks of mere hear-say as to its causes.

Deponent says that in the enterprize of which he is a superintendent, the only American one that has escaped the fury of the Mexican authorities, he availed himself of the opportunity, by purchasing a part of the property at mere nominal prices from private individuals, in the acquisition of which he was sustained by the Judge of the 1st Instance of San Dimas according to a contract.

Here, then, we have the son of an Admiral and Consul taking advantage of robberies, but sustaining the claim, to which said robberies serve as a cover. If a person who acts in this manner is a reputable witness, the undersigned must then candidly confess that he does not understand the meaning of the word.

In the rebutting evidence, besides the President of the company and the superintendent Exall, we have as witnesses Ralph Martin, Thomas Bartholow, the initiator of the enterprize and the principal party in the claim, Sumner Slaw Ely as of counsel for claimant, Alonzo Adams, Atto. of the claim, and to cap the climax, the celebrated Carlos F. Galan.

There is no necessity for us to examine whether all those notoriously interested in the claim, are entitled to be considered as reputable men, and it would suffice to say something in regard to the first name; but the undersigned will not spare a special mention to Galan, although he has already spoken in general of the Mexican witnesses.

Rapp Martin says that he began to reside in San Dimas the very same year that Exall went away from there, and this shows that if there was actually any animosity against him, it was not as an American, but for personal reasons.

He says that Adams was recommended to him by a friend in New York, when said Adams undertook his trip to Durango

in order to procure evidence in this claim; and he endeavors to praise the recommendation; trying to give weight to Adam's proofs, running down those who attack them as the result of fraud and intimidation, going so far in this respect as to say magisterially that one of the witnesses of the defense does not know the meaning of the word «extrajudicial.»

He says he had in charge some mines near San Dimas, but does not say that he ever was hostilized. Was it perhaps because he gave a share in them to authorities, or did he slander them when saying that this was the only way to obtain protection?

If this, notwithstanding, he must be considered as a reputable witness, he will not at least be considered as infallible, and his appreciations in regard to his guest the well recommended Adams, will not be enough to invest Adams with respectability, not even to convince us that he behaved well and honestly in procuring proofs, which is the tendency of deponent's testimony.

Carlos F. Galan, is a native of Spain, as he says; but he went to Mexico when fourteen years old and remained there up to 1872, having been a member of the Assembly, Judge of the 1st Instance, Governor &c.

«When in 1870 and 1871 *there was an excitement in Mexico on account of the claims filed before this Commission, he got posted in many thing relating to said claims, was consulted in several cases, and examined some witnesses.*» These words of his, are corroborated in many claims in which he appears in partnership with the U. S. Consul for the preparation of proofs.

He says that the Governor of the State of Sinaloa General Domingo Rubi, his secretary Don José D. Martinez, the Judge of the 1st Instance of Mazatlan, J. Aldrete, and the District attorney Gaona, used all their efforts to defeat the claims against

Mexico; that said judge destroyed a testimony he had received, and which was favorable to the claimant Geo. Briggs; that Gaona retained in his power some depositions in the same case, until it was too late to file them—as if there had been any limitation as to time for filing evidence in this Commission for American claimants;—that Martinez declared that he would punish any one that should give testimony in favor of «the *gringos*;» that Trinidad Gamboa said to witness that Rubi had threatened him with having him pressed into military service if he did not recant a certain deposition; that Rubi said to witness himself that he would do all in his power to defeat the claims, as the great object was to snatch from Mexico another portion of its territory; that he, Galan, wrote the depositions of Trinidad and Francisco Gamboa and José Maria Loaiza in the consulate of the U. S., and that Adams had no intervention in them—was there any necessity for him to interfere when Galan was there?—and that Adams gave no money at all to the witnesses who testified for him, but only paid their travelling and other expenses; *according to law*,—there is no Mexican law granting such expenses.

Deponent knows that Corona and his officers and soldiers levied forced loans, not only because he heard it from the officers, *but also from those who suffered the injuries.*

With this foundation, he affirms that sometimes provisions were taken, &c.

In view of this abstract of deponent's testimony shall we need say a word as to his respectability and desinterestedness in denouncing and slandering the authorities of his once adoptive country, where he received his education and was honored with distinguished posts in civil office?

F

FAVORABLE ESTIMATE OF CLAIMANTS PROOFS. DISREGARD TO THE
DEFENSIVE EVIDENCE.

The words «notwithstanding what is stated to the contrary by the witnesses produced by the defense, the Umpire is constrained to believe, &c.» clearly reveal that the proofs in behalf of Mexico have not due consideration; but as I will take up this point in section H it is advisable now to limit our observations to what has been thought that claimant's proofs present as certain, viz:

That the authorities of Tayoltita and San Dimas, far from giving claimants that protection and assistance, offered to them by the Mexican Government, and to which they were entitled by treaty, did not only show themselves animated by a spirit of bitter hostility against the company, but stimulated the Mexicans employed by the company to follow a similar course, and even intimidated them into refusing to work for the Americans, who had employed them.

We must refer in the first place to what has already been said, that it is not true that the Mexican Government ever made such special offers of protection and assistance to foreigners employed in mining speculations, but only to agricultural colonists, and much less to corporations residing abroad.

As to the allusion in regard to the treaty between Mexico and the United States, we must remark that the only protec-

tion offered in that instrument to American citizens in Mexico, refers only to those already established there, and not to those who live out of the country,

The stipulation relating to this point, is article 14th of the treaty of 1831, which reads:

«Both contracting parties promise and oblige themselves to give special protection to the persons and properties of the citizens of each *that may be found in their respective territories, subject to their respective jurisdictions*, whatever may be their occupations, and *whether they reside in the country or are transients &c., &c.*

As this company has never been in Mexico, neither as resident or transient, since it is permanently established in New York a right introduced only for foreigners residing in Mexico and subject to its jurisdiction, cannot be invoked in its favor.

Has this Company resided in Mexico, subject to its jurisdiction?

Could the mexican Government extend its jurisdiction to New York, in order that it might reach this Company residing there?

Certainly not, and there are no proofs whatever that the authorities of Mexico were advised of the *legal existence* of this Company *in the United States*, by the presentation of their charter duly legalized.

It has also been shown that this Company could not have any legal existence because the law does not authorize its acts there.

Therefore though in the common language it might be said that an American Company was the owner of the Abra mines, such Company had no standing before the Mexican law, nor could it have enforced any right in such a capacity.

It was only personally that either Exall or some other individual in charge of the interests of the Company might have claimed

the protection of the authorities, as if said property was their own, and so far as their said interests were concerned, it was immaterial whether they belonged to a Company residing abroad.

But as to this Commission it is indeed very material to determine who is the real claimant, and not to overlook the fact whether the company had any legal personality in Mexico, and could exact any protection there.

As to the other individuals who might have asked for protection, Bartholow, Laguel and Exall, the first and the last named said they had no interest in the claim, which is tantamount to saying that they did not prefer it for their personal injuries nor in their own behalf. As to Laguel, why, not even as a witness does he appear in the claim.

Still, let us suppose, that although Bartholow and Exall were the only individuals who had any right to the protection of the authorities so far as Mexico was concerned; as to this Commission, a company organized and established in New Yor might have right to claim for injuries caused to those individuals without its being an impediment for them to be admitted as witnesses of their own wrongs; and let us assume as a basis for the examination, of these wrongs, the testimonies of said witnesses; notwithstanding that they were produced at a time when they could never serve as a foundation to investigate the facts.

Thomas H. Bartholow, the founder, a shareholder and the first superintendent of the business, in his deposition of June 22, 1874 said on this very topic:

«The local authorities went two or three times to the mines and ordered the men employed to quit their work, under the pretext that we did not employ all the men who needed employment and that we did not work the mines as it pleased them.»

Who were the persons who committed such high-handed proceedings under cover of being authorities? When were these outrages committed? Who witnessed them? Bartholow does not say a word in regard to this, and if we examine all the testimonies one by one, we will not find in them any of these essential points.

Will such a vague testimony and of a person notoriously interested at that, be sufficient to receive as true the facts he states?

Exall, the third and last superintendent of the concern, in his testimony of June 11th 1874, says:

«Soto and the Prefect *Marcos Mora*—we must not forget the latter's testimony in favor of the company—incited the workmen to mutiny, telling them falsely that it had gone there to annex Durango and Sinaloa to the United States, and ordered those who were at work to quit. Aquilino Calderon tried once to work in the Cristo mine, and he had to leave the service of the company by force of arms, and through the orders of Soto and Mora.»

As Exall is the *sole witness* who relates these facts, we are left to understand that part of the decision referring thereto, is based on his simple assertion.

And still, there is no testimony in the whole file that deserves less credit than Exall's, because in all the attempts imputed to the local authorities of Tayoltita and San Dimas, we always find him playing the part individually of a victim; because he had some resentment with some of those authorities, if not with all; because as the superintendent of the mines, it was his duty to give an account of the interests he had under his care to the company, and he did not fulfil this duty; because he has been charged by the witnesses of the defense of having squandered money belonging to the company in gambling, be-

cause he has a manifest interest in sustaining this claim; and finally, because his testimony is interspersed with the grossest falsehoods, such as the assertions that *all the trains* and mules of the company captured by the imperialists were not worth over \$1500: that the pile of *tepetate* out of the mines, was placed there after the abandonment of said mines, by the company: that some twenty tons of ore produced about \$17,000 worth of silver, and that the ores produced on an average \$675 per ton, and notwithstanding, which he charges a million of dollars for about one thousand tons of all kinds of ore.

The sole circumstance that this charge was not consigned in the memorial and could not therefore have been a matter for rebuttal, would be enough in any Court to disallow it.

Can there be anything more iniquitous than to condemn a party on a fact, the imputation of which was not brought in time to his notice, or more unjust than to accept as proved such a fact, by the simple affirmation of the pretended victim of the wrong?

The undersigned defies any person, even the most prejudiced in favor of these claimants, to designate which are the satisfactory proofs presented in time that the local authorities of Tayotlita and San Dimas intimidated the inhabitants into desisting from the further prosecution of the works of the mines, mentioning the dates and circumstances of such intimidation.

G.

IMPORTANCE OF THE ACTS OF THE LOCAL AUTHORITIES IN REGARD TO THE COMPANY.

What the *incessant* and vexations' annoyances of the employees of the company by the authorities of Tayotlita and San Dimas consist in?

What constitutes their unjustifiable intervention in the business of the company?

The only fact that can be considered as proved, is that from the 3^d to the 24th of June, the Judge Guadalupe Soto and the Prefect *Marcos Mora*—the same individual whose testimony this company has filed in evidence—addressed some communications to the manager of the La Abra smelting works about the wages of the workmen, calling his attention to the necessity of coming to some arrangement with them, and requesting that they should be allowed to pick up some ores, whilst the works of the mines were paralyzed.

In order to pronounce as unjustifiable this intervention, it would be necessary to weigh all the circumstances that produced it, and see whether the common interest of the locality and the necessity of preserving public tranquillity and of preventing greater evils, could not, at least, be an excuse for it.

But since, without bearing in mind such circumstances, it is pretended that even though the superintendent of the mines paid his laborers in goods and at the prices he choosed to fix on them, and even though the laborers seemed to be inclined to commit excesses, thereby endangering public tranquility and the interests of the whole community, the local authorities should have refrained from making any suggestion whatever to the superintendent, said communications can only prove that *once* in June 1867, the local authorities tried to interfere in the business, but not that they *incessantly* annoyed those in charge of it.

And is Mexico to be condemned to pay such an enormous fine on account of this momentary intervention, the immediate results of which have not been demonstrated?

How can we help being surprised that an American company who just at the beginning of 1868 had extrated from 20 tons of

ore, not less than \$ 17,000, should abandon the mines yielding such products, just because nine months previous and when their works were paralyzed its permission was requested to allow some laborers out of work to search amongst its worthless ores something that might cover their wants?

It was also said that claimants' lives were in danger: «For this reason, as well as for the well grounded fear that their lives were in danger, they resolved to abandon the enterprise.»

It can easily be understood that this observation does not refer to all the bondholders or managers of the business, who are the claimants in this case, and whose lives certainly, were not in danger at the mines; but it refers to the persons employed there, by the company.

But, who were those persons? Who were the individuals who abandoned the mines?

Nobody else but Exall. At least, his is the only name we find on the files.

But what proof is there that Exall's life was in danger? Solely and exclusively Exall's own word. There is not a single person in his company at the time of the abandonment to testify that the danger really existed.

Not even James Granger, who in his first affidavit produced before Consul Sisson of Mazatlan on the 20th of May 1870, said that he was the second superintendent of the mines and that he kept a memorandum of the names of the persons employed in them, has told us a single word about their lives ever having been in danger.

And if anybody's life besides Exall's should have been in danger, it would certainly have been his lieutenant's. But we notice that, either by Exall's orders, as Granger pretends, or without it, as Exall and the President of the company say, the fact is that Granger did not only remain at the mines, but dis-

posed of the property, and is now, as it appears, one of the actual possessors of said mines.

Unless, therefore, that we give to Exall's word full probatory force, we cannot take it for granted that his life, and much less the lives of the other employees of the company, whose names are not given, were in danger at the time of the abandonment of the mines.

H

THE DEFENSIVE EVIDENCE CONSIDERED AS FAVORABLE TO THE CLAIM.

As immediately after saying that the facts on which this claim is founded have not been refuted nor even weakened by the defensive evidence, it is added: «on the contrary he—the Umpire—believes that the local authorities were determined to drive the claimants out of the country,» we must necessarily infer that said evidence is considered as corroborative of such a belief.

And still that evidence only shows:

1st That there was no ill-will against the Americans in the neighborhood of the mines; in corroboration of which the American companies working, without suffering any hostility, the mines of «La Candelaria» and «Bolaños,» are cited.

2^d That the mines we are speaking of, were productive only when worked with economy, its ores being smelted at a very reduced cost.

3^d That the Agents of the company destroyed the old mill, introduced some expensive machinery, kept numerous employees, and, in short, that they intended to carry the speculation on such an expensive plan, and at such a cost beyond the yield of the mines; and.

4th, That for this reason, *and for no other,—much less on account of hostilities on the part of the authorities,*—they determined to abandon the business as soon as they realized that it did not correspond to their expectations.

True it is that some of the witnesses say that the laborers were not willing to receive their wages in goods; but in order that this statement should be received as corroborating the claim, it would be necessary to establish as a rule that the Mexicans were bound to work for the Americans receiving their wages in the shape they chose to fix.

On the contrary, the defensive evidence far from sustaining the claim, based on the abandonment of the mines on account of the persecution declared by the authorities,—being in accord with claimant's proofs *simply* on the fact of the abandonment,—show as its true cause bad management, as to the scale on which the enterprise was carried, and the want of funds to continue it.

Leaving aside therefore all that part of the defensive evidence referring to the criminal means employed to obtain proofs in behalf of the claim—strong presumptions of which exist even outside of said proofs,—it is left for common sense to decide between these two explanations of the abandonment.

1st A business, with a fair prospect of reaping immense products, and having at its disposal sufficient funds to overcome any difficulty, is abandoned on account of the persecution declared by one or two persons invested with local authority.

2^d The business fails because the products are less than the disbursements necessary to obtain them.

Is this last extreme, by chance, anything unusual, surprising or improbable?

Is the first reasonable, and, above all, is it in keeping with the energy of American speculators, whose perseverance in lucrative undertakings is proverbial all over the world?

I

DENIAL OF PROTECTION BY THE LOCAL AND THE SUPERIOR STATE AUTHORITIES

Let us overlook the denial of protection from the local authorities, from whom appeal was taken—it is said—to the superior officers of the State, and examine what proofs are there that such an appeal was ever made.

The expression «superior Authorities» used in plural, seems to involve some equivocation, since it has not been alleged that application was ever made to any other officer but to Governor of the State of Durango,

We have already spoken of Chavarria's testimony, showing the want of intelligence, if not of character, of this witness and actor in the matter.

We next find *Márcos Mora's* affidavit in which he says that in July 1867, he saw Chavarría in Tayoltita, and in that same month or the ensuing, he went with him to the La Abra mines and smelting works, where they remained two days together, examining the mines; that in October, Chavarría told witness that the company had employed him to present a complaint to

Governor Ortiz de Zarate, for the injuries and persecution they had suffered at San Dimas, in order to get the protection of said Governor; that in consequence of this complaint, Sr. Ortiz de Zárate called Mora and questioned him in regard to the behaviour of the company, and Mora said to him that it was composed of Americans, who, like all foreigners, were trying to ruin Mexico, and the Governor denied his protection; that said Governor had appointed deponent as Prefect of San Dimas on March 1st 1867, and that *he accepted deponent's resignation* in July of said year.

It must be remembered that this is the very same Márcos Mora who in June and July 1867, addressed to the manager of the La Abra mill the official notes we have spoken of, in regard to the wages of the workmen, requesting that they should be allowed to pick out some ores. We must remember, likewise, that in the same month of July, or in the ensuing August, Mora and Chavarria visited the mill, and that it was in July too that, as he says, he *sent in his resignation*. If we read Chavarria's testimony, we will find that there is no truth in Mora's resignation, but that he was tried on account of his bad behaviour as Prefect of San Dimas, and Chavarria, the company's lawyer, was his counsel. What credit can we give to the testimonies of the persecutor of the company and of its defender, both declaring in its favor?

Let the Umpire compose the two testimonies, and then decide whether they deserve any attention.

The other witness who testifies about Sr. Ortiz de Zárate having denied his protection, is Exall, who in his affidavit of May 1874, says:

«I personally solicited the protection; Jesus Chavarria, *the most distinguished lawyer in the State of Durango*, also solicited it in the name of the company. It was denied in both cases. Chavarria told me that Zárate was determined to drive all the

American Companies from that part of the country. In 1867,—I believe it was in July,—I applied to Governor Zárate, trying to get not more than a letter directed to the Prefect and District Judge of San Dimas, requesting them not to trouble me in my work. I then received from said Governor the answer that the company ought to abandon the enterprise, as popular sentiment was opposed to *the proclamations of President Juárez.*»

Señor Ortiz de Zarate could never have referred to proclamations which *have never existed*; but leaving apart this allusion made by Exall, trying to induce belief in their existence, it will be noticed that he pretends to have made his complaint in July 1867, *the very month precisely in which Mora addressed him the communications above referred to*, and the same in which Mora was dismissed and tried, a proceeding that could certainly have been more efficacious than to adress a simple letter of recomendation; as it would have been more proper for a *distinguished lawyer*, like Chavarria, to accuse Mora than to *stand for him as of counsel*.

But let us suppose that Mora's dismissal from office had nothing to do with Exall's complaint, and that said complaint, and Chavarria's were actually presented during the month of October.

Should they be satisfied with a simple verbal denial of the Governor?

Was the Governor the highest irresponsible authority of the Mexican Republic?

Certainly not. They could have complained of the negligence of that officer to the President of the Republic, and only in case that he should refuse to interfere, could it be said that all the *administrative* resources had been exhausted. In October 1867 the Constitutional Government had been reinstated at the capital of Mexico and nothing could have been easier than to apply to it.

Recapitulation. As the only proofs of the denial of protection

on the part of the Governor of Durango we have the simple assertions of Chavarria and Exall, *without any documentary evidence*. Against that, we have the data furnished by these same individuals of the dismissal and trial of Mora on account of his bad behaviour as Prefect of San Dimas, and we have too the testimony of this wretch, upholding his defender Chavarria in parts, and contradicting him in others, and conflicting with himself in regard to his inculpations against the agents of the company, since he denies ever having heard any inculpation against them, and still says that he informed Governor Ortiz de Zárate that those agents were trying to ruin Mexico.

With such testimonies, can we accept as true that the protection of the Governor of Durango was asked for and denied?

J

CLAIMANTS DID NOT USE THE JUDICIAL RESOURCES.—A REMEDY THAT WAS NOT EMPLOYED.

The undersigned has heard with great surprise of the theory that when the political authority of a place shows some animadversion to a foreigner, and the Governor of the State is indifferent to the complain made on this account, the foreigner is, thereby, excused from using any judicial remedy to defend his rights, and the country is to be held responsible for the injuries that he may resent.

This theory implies that the judiciary of a country under a constitutional regime, is subordinate to the political or administrative power, so that against the acts of the latter, the course of justice is inefficacious.

Without entering into this general question of public law, it will be enough to say that the fundamental law of the United States of Mexico has placed under the protection of the federal judiciary all the individual guarantees, prescribing that «all complaints on account of laws or acts of any authority that violate or curtail these guarantees,» shall be brought before the judiciary—Article 101 of the Constitution.—

See the law regulating this article, issued Nov: 30th 1867, in force in 1868.

In Mexico therefore, there is no authority, no matter however so high, against whose acts it may not be possible to appeal for the protection of the federal judiciary, the Courts of justice being organized on a basis of absolute independence from all State authorities and tribunals.

The Judges who constitute those Courts are appointed by the President of the Republic, through the nomination of the Supreme Court, and they cannot be removed from office without first being tried and found derelict in the fulfilment of their duties.

The protection of the federal judiciary, thus organized, has been and is efficacious, even against the acts of the President, which more than once have remained without effect through the instrumentality of the judiciary.

At the beginning of 1868 the federal Courts had been reestablished all over the country, and nothing could have been easier to the Agent of the Company than to file his complaint against the authorities of San Dimas and Tayoltita with the District Judge of Durango.

Why should we believe that this legal remedy would have been useless?

In the case no. 374 of «Jennings Langhland & Co.» the charge was brought against Mexico not simply of ill-will of the local authorities against claimants or their Attorney, but of an unjust and illegal sentence, as it was alleged, passed on claimants by the Judge of the 1st Instance of Minatitlan.

In the decision of this case it was said: «The Umpire does not feel himself called upon to decide whether the abovementioned sentence was just or not. If the claimants considered that it was not so, *they failed in their duty* in not appealing to a higher Court against the conduct of and inferior judge, *with a view to his punishment and to the recovery of the damages*; but they appear to have taken no steps whatever either themselves or through their Agent *to avail themselves of the resources open to them. . . .*»

«The Umpire does not conceive that *any Government can thus be made responsible for the misconduct of an inferior judicial officer* when no attempt whatever has been made to obtain justice from a *higher Court.*»

The parties interested in the claim, not satisfied with this decision, attempted to prove that at the time there was no superior Court to appeal to.

Their petition for a rehearing was, nevertheless, disallowed, amongst other reasons for the following:

«The Umpire has been given to understand that there existed at the time a Court of appeal at the city of Veracruz, but if this was not the case. . . . he cannot doubt that as the circumstances of the revolution had prevented the claimant, through his Agent from presenting his appeal before that Court, he would have

been permitted to do so upon the reestablishment of the authority of President Juarez in Jalapa and from the moment of the renewed sitting of a legal Court.»

Is there any substantial difference between this case and that of the claiming company?

None whatever. Because if there was a judicial decree against the Attorney of Jennings Laughland & Co., ordering him to deliver some property he had under his charge, there was also, as it is pretended, a judicial order against the agent of this company for him to vacate the mines. If in that case it was the Attorney's duty to appeal from the judicial decree which was notified to him, Exall in this case should have answered that he would not submit to the decree, and if the Judge insisted, then he should have appealed from the Judge's determination to the Superior Court of the State.

If at the time said Court did not exist, he should have waited until it was reestablished, when the war should be over.

And if instead of litigating before the State Courts he preferred to apply for protection to the federal Courts against the local authorities, he also had this resource at his disposal at the termination of the war, and was as much in duty bound to employ it, as the Attorney of Jennings Laughland & Co. was bound to follow the appeal.

What difference could it make, that the Judge of Tayoltita in the District of San Dimas should have the support of the Prefect, even granting that he had great power, in order to prevent the Superior Court of Durango from amending the outrages of that Judge, and from inflicting on him the condign punishment.

To take for granted that the influence of the Prefect of San Dimas, and even that of the Governor of Durango, would have prevented the superior Court of that State from administering

justice, is certainly worse than to admit that a Judge appointed by a Governor should not have sufficient independence to decide against said Governor a case submitted to his decision.

And still, when in the case of Kennedy and King, no. 340 it was alleged that the reason why the right to a property seized by general Garza, then Governor of Tamaulipas, was not enforced, was because the Judge who had to decide the case, had been appointed by Garza, and did not inspire any confidence to the allegators, the Umpire said:

«The reason given by Mr. Chase for not acquiescing in the proposal of General Garza, *cannot be maintained by one Government against another.*»

In one of the last decisions of the Umpire—that given in the case of Alfred Howell vs. Mexico, no. 970—we read: «The vague assertions of the witnesses that the General's—Lozada—influence was supreme in the District of Tepic *cannot possibly be taken as proof that he dictated the action of the judges and tribunals of the land.*»

How can it then be said, that because the Prefect of San Dimas showed some ill-will to the manager of the enterprise, there was no independent tribunal in the State of Durango who could do justice to him, or that in the whole Republic of Mexico there was no power, capable of protecting him in his individual guarantees?

The special protection that the Mexican Government is bound to dispense to the Americans *residents or transients* in Mexico, consist in giving them free scope to employ the same legal remedies that the Mexican citizens may employ in defending their rights, —Article 14th of the treaty of 1831.

If the same tribunals that are open to the Mexicans are likewise open to the Americans in Mexico, how can it be main-

tained that the want of confidence in the result of their efforts excuses them from applying to said Courts?

What other guarantees could Mexico grant them than the same that are granted to the natives?

Do claimants pretend that for the Americans special Courts should be established, composed of such persons as would inspire them with full confidence, and who should be exempt from the possibility of submitting themselves to the influence of the local authorities?

The undersigned has failed to find among the allegations of the company any statement to the effect that when they abandoned the mines, there were no Superior Court of Justice, and no District Judge in Durango. These authorities certainly existed at the time, as constitutional order had been reestablished all over the country from about the end of 1867.

Señor Ortiz de Zarate was not then the Governor of the State, because he had only been provisionally in charge of the Government, and the Constitutional Governor was elected in October or November, 1867.

Therefore, if we leave aside the want of confidence that all the public functionaries of Mexico may inspire generally to the citizens of the U. S., there is no reason whatever to justify the course followed by the agent of the company in not applying to the Courts of justice in quest of protection, before he should have abandoned the business under his care.

To consider, then, as puerile the requirement that the parties in this case should have exhausted all the judicial remedies before initiating any diplomatic claim, is tantamount to consider as unfounded the pretension of Mexico that the Americans should submit to the Courts of the country, good or bad as they may be: to belittle a solemn compact entered into between Mexico and the United States, and to create a special jurisprudence.

ence only for this case, deviating even from that applied to other American claims against Mexico.

We can cite among others that of Alfred Green, no. 776, who, like Exall, complained of false imprisonment in San Dimas, and hostility from the local authorities. It was said in the decision: «If the judge illegally imprisoned the claimant, *it was certainly in his power to appeal to a higher Court, and to sue Judge Perez for false imprisonment.* It is shown that he was at Durango shortly after his imprisonment and that *he had a lawyer there.* Nothing could have been more easy for him than to seek his remedy *through the Courts.* But it does not appear that he took any steps in *that direction.*»

Having already shown that the agent of the company could and should have employed judicial remedies, both before the Superior Court of Durango and the federal judiciary, before abandoning the interests placed under his charge, we can still indicate another remedy, very easy indeed, that he might have employed after having exhausted the others, viz; ask for protection to the Government of Mexico, through the representative of the U. S. there.

We have remarked that any man placed in Exall's circumstances, however negligent in the fulfilment of his duties he might be, would never have abandoned those interests without forming an inventory, and that at arriving at the nearest place where his life was not in danger—admitting that it actually was at the mines—his first act should have been to make a detailed statement of the occurrence, either in the form of a protest before the U. S. Consul, or in the shape of any other document, founding his intention to abandon the business, and throwing the responsibility on the Mexican Government.*

* In the decision of case 994, «W. L. Laird vs. Mexico» we read: «Nor is it to be believed that the claimant on his arrival to Matamoros should not have laid his complaint

Before carrying through such an intention he should have done two things, viz: 1st He should have consulted with the managers of the company, and 2^d He should have made a statement of the facts to the Representative of his Government, in order that he might have applied for the protection needed by the company, or in case of being unable to obtain it, that said Representative might have authorized the abandonment of the mines, giving due notice in either case, and stating his reasons to said Government.

Is there any exaggeration in pretending that this course should have been followed?

Is there any thing impracticable or very hard to accomplish in it? Nothing that we can think of.

What we do find exaggerated, not to say preposterous, is the pretension that we should believe that the manager of such a large property should have abandoned it without being authorized to do so by its owners, and that a foreigner—and especially an American—entitled to the protection of his Government, should not apply for it before abandoning an enterprise in which there were millions in prospect, and in which, hundreds of thousands of dollars had been spent.

In all the papers of the file the idea is repeated that the President of Mexico was very favorably disposed towards foreigners. If the subaltern authorities did not second that sentiment, what could have been more natural than to complain to the President of Mexico?

before the U. S. Consul at that port. Why, then, should we believe that Exall should not have laid *his* complaint before the U. S. Consul at Mazatlan?

K.

OBLIGATION IMPOSED ON THE MEXICAN GOVERNMENT ON ACCOUNT
OF ITS LIBERALITY WITH FOREIGNERS.

The Mexican Government must decline the honor conferred on it as to its liberality towards foreigners, because its motive is incorrect.

As we have already remarked, it has been so repeatedly said in this claim that the Government issued proclamations from 1856 to 1864, *inviting foreigners to invest their capitals in Mexico, in any kind of industrial pursuits*, that a belief has been formed that such proclamations really did exist, *when they only do in the minds of the forgers of this claim.*

The undersigned, therefore, prays the Umpire to rectify this error in which he has been induced by claimants, and not to take fictitious offers as a ground for his final decision.

The Government of Mexico has never made any offers to foreigners residing abroad, and its treaty engagements are reduced to give to foreigners *residing within the national territory, and their properties* the same protection as to the native citizens and their properties, but without granting *any special privilege* to foreigners.

It is only to foreigners who should *establish in Mexico agricultural colonies*, that certain advantages have some times been offered. See law of March 13th 1861.

The principles of international law and the treaties between Mexico and the United States, certainly do not bind the Government of the former to secure to the citizens of the latter residing

within its territory, that the subordinate authorities will never annoy them, but simply that *they will enjoy the same resources as the native citizens* against all arbitrary acts to their persons and properties.

How can those principles and treaties bind the Mexican Government to guarantee to the American citizens the impecability, of all and every one of the persons constituted in public authority and that they will understand their duties always and under any circumstances without making any mistake?

We have already cited two of the Umpire's decisions that answer this question, and among several others in that direction, we will quote the case no. 135, William J. Blumhardt vs. Mexico.»

The decision reads:

«The Umpire is of opinion that the Mexican Government cannot be held responsible for the losses occasioned by the illegal acts of an inferior judicial authority, when the complainant has taken no steps *by judicial means* to have punishment inflicted upon the offender and to obtain damages from him: The Umpire does not believe that the Government of the United States, or of *any nation in the world*, would admit such a responsibility under the circumstances which appear from the evidence produced on the part even of the claimant, showing that Judge Alvarez was the person to blame and that it was against him that proceedings should have been taken.»

So it is admitted that no Government can be held responsible for the errors or illegal acts of its inferior judicial authorities, until all the resources created by law have been exhausted in vain for the punishment of the culpable and the indemnification of the damages; and why is this? Because no Government can be made responsible that all and every one of the persons invested with public authority will always act with rectitude.

If Governments could find persons to place in office exempt from all passions and human weaknesses, and if instead of selecting such persons, they should appoint men, who, for the very reason of being men, are always subject to commit errors, then only could they be held responsible for the faults committed by their subordinate officers.

And if we admit that neither international law nor existing treaties can hold Mexico responsible for the acts of the inferior judicial authorities, when the judicial resources have not been exhausted, what reason of difference can there be in regard to the inferior political officers, when equal resources can be employed against their arbitrary acts and errors?

Is it, by chance, more binding on the Mexican Government to employ in its executive administration beings superior to human frailties, than to employ beings of this kind in its judiciary?

It should be enough, therefore, that no such special engagement has ever been made, to revoke the decision founded on it.

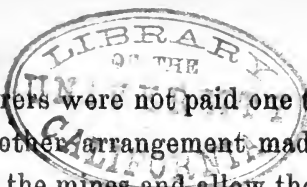
On the other hand, who can say that it has been satisfactorily shown that the company lost all the capital invested in the mines, *solely* on account of the annoyances caused to their agents by the local authorities of San Dimas and Tayoltita?

Let us overlook the very suspicious character of the proofs of such annoyances, and see what did they consist in, and what could have been their result.

In order that the ill-will of the local authorities to the company or its agents might constitute a motive for inculpation, it would have been necessary to determine the facts showing its existence.

It was alleged that these facts were:

1st Exall's imprisonment ordered by Judge Nicanor Perez, for alleged contempt to said Judge.



2nd Intimidation that if the laborers were not paid one third of their wages in money, or some other arrangement made with them, the company should vacate the mines and allow the laborers to work them.

3rd Suggestions to the laborers not to work for the company, and intimidation to those who were disposed to work.

4th Threats to Exall.

As to the first fact, if we do not pay exclusive attention to Exall's word, but we take also into account the defensive evidence, it will be found that the alleged imprisonment had a cause, and lasted only a short time,—two or there days.

This fact, therefore, cannot be judged in a different manner in this case from what a similar fact was disposed of in case no. 776 of Alfred Green, in the decision of which, we read:

«With reference to the imprisonment at San Dimas of which the claimant complains, the first inference *must always be* that the sentence of a judge or Court *must be a just one*. *The strongest proof must be produced to justify a contrary belief*, In this instance the claimant represents that he was imprisoned because he refused to pay \$34 on the ground that the exaction was illegal. Witnesses testify that the act of the judge Camilo Perez was illegal, but they do not give the grounds of this opinion. No proceedings of the Court are produced and the exact reason of the imprisonment is not shown. . . .»

«If the judge illegally imprisoned the claimant, it was certainly in his power to appeal to a higher Court, and to sue judge

Perez for false imprisonment. But it does not appear that he took any steps in that direction.»

The claim was dismissed. For the same reason the fact mentioned in the first place as a ground for the present claim, must be disregarded. Exall's imprisonment, lasting two or three days and originating out of a purely personal cause, could not have produced the ruin of the business.

As to the second fact: admitting that the agent of the company really was intimated into vacating the mines, this occurred in June or July 1867, and their alleged abandonment did not take place until March 1868. It was not, therefore, the immediate result of the intimation.

After this, the *Prefect Mora*, the one who made the intimation, was removed from office, and, if we are to believe his word, he visited afterwards the mines with the company's lawyer, and found them in a flourishing condition.

Guadalupe Soto, the other individual who, in his capacity of an authority, transmitted said order to the manager of the «La Abra Mill,» was on such good terms afterwards with Exall, that in February 1868, they entered into an agreement, by which Soto was allowed to occupy the *hacienda* of Guadalupe belonging to the company for six months, without paying any rent.

Moreover; at the beginning of 1868 Exall—as he says—reduced some twenty tons of ore, and got from this operation the handsome sum of \$17,000, and this proves that the intimations of Mora and Soto did not prevent him from continuing his works, nor were they the cause of the abandonment of the mines; and we are left to believe either that Exall made some new arrangements with the laborers, or else that Mora's successor in office did not carry through the intimation made by him.

As to the suggestions made by the local authorities to the laborers not to work for the company, the proof is reduced exclusively to the assertions of Exall and Chavarria, who was not an eye-witness, and could only speak from the information he received from Exall.

In contradiction with this we have Exall's own statement that at the beginning of 1868, he benefitted some ore, which he certainly could not have done without the help of the workmen.

Exall is likewise the *only witness* who says there were threats of death if the business was not abandoned.

In this particular, therefore, this case is identical to the dismissed case of the «Siempreviva Mining Co» no. 98, in the decision of which we read:

«The claimants further charge that Mr. Leya was forced by threats to fly from the mines of which he was in charge. The fears inspired by threats which induced Mr. Leya to abandon his post, are not in the Umpire's opinion sufficient ground for making the Mexican Government responsible for losses arising from his flight, if it really caused any such losses. But the proof that any such threats were made by Mexican officers or authorities is of the weakest kind. *It is only Leya himself who speaks of threats* daily uttered against him individually by the officers and soldiers of the forces of the Republic, without even testifying that they were made to him directly and personally. *Other witnesses make no mention whatever of these threats.* One witness, Adolfo Laguel, speaks of them as being made generally against the company as well as its agents on account of their being foreigners.»

II.

AMOUNT OF THE AWARD.

L

Considering as well founded the responsibility of the Mexican Government on account of the alleged hostile acts of the local authorities of San Dimas and Tayotlita against the company, and likewise, that these acts were the exclusive cause of the abandonment of the mines, and overlooking entirely the absolute want of all formality in which it was made, the Umpire proceeds to determine the amount of the compensation.

The first basis fixed with this view, is that the company is entitled to be reimbursed in the amount of their expenditures and of the value of the ores extracted from the mines, with interest on both sums.

In order to establish such a basis it is necessary to suppose that the speculation *of itself could never have been subject to any loss*, and that without the annoyances caused, as is believed, by the local authorities, it would, at least, have saved the whole amount of the expenses, obtaining moreover a net profit of six per cent per annum, besides the products of the ores extracted.

L BIS.

PROSPECTIVE GAINS.—VALUE OF THE MINES.

«Mining speculations»—says the decision—«are proverbially the most uncertain of all undertakings. Mines of the very best reputation and character suddenly come to an end, either from the exhaustion of the veins, or from flooding, or from some of the innumerable difficulties which cross the miner's path.»

This being an unquestionable truth, what positive data have we to set down that the mines of this company would have produced any gains whatever, even insignificant, up to the day of their abandonment, and that, had they not been abandoned, they should have continued their products?

The decision consigns the very reverse, declaring that it had not been shown that the company received any dividends before the time of the abandonment of the mines, and establishing the basis that it could not have count on sure gains in the future.

Let us, then, suppose that on the last day of 1867, this company should have decided to strike a balance of its business.

Let us also suppose that on that day its expenditure amounted to \$341,791 06, a sum fixed by the President of the company on September 29th 1870, all expenses told, including salaries of the employees, office rent, fees of attorneys and judicial costs.

Let us suppose too, that the stock in ores is to be estimated, as it has been in \$117,000 [including the product of the 20 tons that Exall says, rendered \$17,000 at the beginning of 1868].

The account or liquidation should have been:

Expenditures.	\$ 341,791 06
Products	117,000 00
	<hr/>
Difference.	\$ 224,791 06

It was, therefore, necessary that the mines and the improvements made in them should have been worth \$ 224,791 06, in order that there should be no loss to the company.

But to suppose that they were actually worth that much, would be tantamount to take for granted that the mines would be productive in the future, and, for good reason, this was not done in the decision.

If on the 20th of March 1868, the mines would have become exhausted for any of the innumerable causes given in the decision what would they have been worth afterwards? Nothing at all, and even the machinery would have been worth much less than it costed.

Now, if the value of the mines could not form an item in the liquidation of the business at the time of their abandonment, *there were undoubtedly losses in lieu of gains.*

It is on this ground that interest is granted *as safer than prospective gains.*

M

WHY INTEREST IS GRANTED.

Whilst acknowledging that a mining speculation is one of the most uncertain of all undertakings, producing at times great profits, at others none whatever, and even causing the ruin of the speculators; it is taken as a standpoint, that claimants were not only free from losses, *but that they would have obtained, at least, regular profits.*

N

WHY PROFITS ARE NOT ALSO GRANTED, BESIDES INTEREST.

And yet, as if to secure moderate utility in the shape of interest seemed to be too little, it was thought advisable to give a reason for the denial of prospective gains, by saying that to grant them, would have been to grant twice the same thing.

This seems to corroborate the idea that interest is granted under the impression that the capital would *necessarily* have produced profits or gain, as if this company was placed beyond all the difficulties that ordinarily cross the miner's path, and frequently cause their ruin.

N^O. BIS.

THAT THE GOVERNMENT OF MEXICO IS NOT CONDEMNED TO PAY
THE VALUE OF THE MINES.

The company paid a certain sum as purchase money for the mines it was going to work, it sent out some machinery, and undertook certain works, which the witnesses for the defense esteemed disproportionâte to the circumstances of the mines:

The Government of Mexico is charged with the amount of the purchase money, the cost of the machinery and of the works, as it is compelled to pay *all that is said to have been expended*; and yet, it is added that it has not been condemned to pay for the value of the mines, because it cannot be estimated, even aproximately; alluding to the capital represented by the enterprise on account of its *possible* products.

Even admitting that it was just and equitable that the Mexican Treasury should reimburse this company of all its positive losses, it is a well known principle that prospective gains are never included in this class of compensations, even when speculations of known and undoubtful products were involved.

But in that case what certainly ought to have been shown are the actual and positive losses, the true amount of the capital invested, and that it was really spent in the object to which it is supposed to be destined.

Because if the expenses were of no use nor the speculation, or were made without any intelligence and discretion, how could it be just to condemn defendant to reimburse them?

O.

INTEREST ON THE PRODUCTS OF THE MINES.

The Mexican Commissioner, after showing with numerous reasons the want of foundation in this claim, concluded by saying that claimants asked much, to obtain something; but that absolutely *nothing* ought to be given to them.

But the American Commissioner without going to the trouble of stating the reasons for his opinion, proposed to give claimants only the amount of the expenses they had disbursed in the speculation—and which he did not take the pain either to determine,—with interest, at six per cent, in lieu of prospective gains.

Consequently, the disagreement of opinions between the two Commissioners, consisted in whether claimants should receive *nothing*, or be reimbursed of *all the expenses they incurred*.

Both Commissioners agreed that nothing else should be given to claimants than said expenses and interest thereon.

The point, therefore, submitted to the Umpire's decision was simply whether claimants were entitled to be reimbursed of the expenses they had incurred in their speculation in Mexico, with interest thereon, *and no more*.

There is not a single word in the American Commissioner's opinion in regard to the actual products of the mines, but on the contrary, it very clearly determined that only the capital invested should be reimbursed, granting interest for all kind of profits.

It is, therefore, unquestionable that the assignment of a cer-

tain amount for the products of the mines is the exclusive work of the Umpire, and it constitutes a point, foreign to the question submitted to his decision; we have, therefore, three different opinions of the three members of the Commission, viz: the opinion of the Mexican Commissioner declaring that *nothing* should be given to claimants; that of the American Commissioner in the direction that they should have the amount they spent in the speculation, with *interest*; and, finally, the Umpire's opinion, granting the amount of those expenses with interest, *plus the products of the speculation, also with interest*.

As this Commission is formed by a board, it is only the concurring vote or opinion of a majority of its members that can prevail in it; in other words, the Umpire or third Commissioner, as we may say, can only decide the points on which the other two have disagreed.

This has been the view and practice of all international Commissions, and it has been the view and practice that have shaped the proceedings of this Commission; for instance:

In the case of Bernard Turpin against Mexico no. 90, there were two points to be decided; the Commissioners agreed on one of them, and the Umpire said.

«With regard to the second claim it appears that the Commissioners have agreed; the Umpire is not, therefore, *called upon to say anything about it*.»

In the decision of the case of Bartolo Hicks, no. 487, we read:

«The case involves a variety of claims most of which the Commissioners have agreed to dismiss. There remain *but two upon which they differ*, and with regard to these the Umpire is of the *same opinion* that the Commissioner of the United States.»

It is, therefore, seen that the Umpire believed that he was only called upon to decide such points in which the Commis-

sioners were unable to agree, and on these, he was decided by the opinion of one of the Commissioners.

Sometimes he did not entirely adopt one of the disagreeing opinions; but even then his opinion never went beyond that one from which he deviated, but was restricted to its limits, whence it always resulted that there were two agreeing votes up to a certain point, and the decision of this Court by the vote of a majority of its members, covered that point.

So in the case of Augustes Belknap no. 185, the Mexican Commissioner was of opinion that the whole claim ought to be dismissed; the American Commissioner, that claimant ought to receive an award of \$25,000 or more; and the Umpire granted \$20,000, there being in consequence *two opinions in accord covering this last sum.*

The rule of not deciding any point, foreign to those contained in the dissenting opinions, nor to exceed their limits, has been universally followed by the Umpire, so much as that this case is the only one that can be cited in which he has deviated from it.

We cannot doubt the fact that the Umpire has granted to these claimants in his decision *more than the Commissioner of the United States* if we only compare the words of the two decisions, nor can we question the practice to the contrary so universally followed, and the grounds on which this practice is based.

P

PROOF AS TO THE CAPITAL INVESTED IN THE SPECULATION.

The simple affidavit of the president of the company, Mr. George C. Collins has been considered as a clear and straightforward proof of the expenses disbursed by this company in its mining operations.

And yet, who are the parties interested in this claim?

Evidently those who advanced the funds to meet the expenses of the enterprise, inasmuch as whatever might have been the true cause of their loss, their only hope of being reimbursed was through the award they expected to get from the Umpire; in other words: the bond holders and creditors, apart from those who concocted and have promoted the claim, by all manner of means, fair or foul, and who would carry a large portion—if not the largest—of the award that might be granted.

Of the latter we are acquainted with those who appear on the files, viz: Summer Ely, *Alonzo Adams, Robert Rose, Frederick Stanton, W. W. Boyce and Thomas H. Nelson*, formerly Minister of the United States to Mexico. Other persons, very likely, whose names do not appear on the files, will also have a share in the award.

But those interested in it in an ostensible manner are undoubtedly, the bond holders and creditors, since without the award they could have no expectation of ever being reimbursed of what they lost in «the most uncertain of all speculations.»

No complete list has ever been presented to this Commission

of the bond holders, expressing their separate shares, as it ought to have been done, to dispel—if for no other reason—the well founded doubt that has puzzled the Commission in other cases, as to whether the recipients of the awards were citizens of the United States, or not.

With this view, it ought to have been shown, at least, that no others but citizens of the United States could acquire shares in the speculation.

The names of twenty eight persons have been mentioned as bond-holders, but, if we are to judge by their names, the only thing we can say positively is that not one of them is of Spanish origin, it appearing that almost all are of English extraction. If those who they belong to have this nationality, or any other of English descent, is a matter utterly impossible to be guessed at.

Of these twenty eight names only three are mentioned with the designation of their shares, viz:

George C. Collins.....	50
Thomas Bartholow.....	160
Dabney C. Garth.	250
	<hr/>
	460

There are only three persons, therefore, who are entitled to claim before this Commission, and if they, at least, would have fulfilled the order of the Commission of January 21st, 1870, and presented the titles to their respective shares, the most that could have been granted to them would have been the value of those shares, say \$46,000, with interest—if it so pleased—from the day on which they might have received their dividends,—admitting the possibility of designating that day.—

Instead of doing this it seems that the persons entitled to receive an award have been entirely overlooked, and there has

been an intention to designate it by figures taken from the affidavit of one of the few persons notoriously interested in obtaining the award

Collins, owner of fifty shares worth \$ 5,000, and the company's creditor to the amount of \$21,145.17, which *he says* to have been lent to it, and for his salaries as president—time and amount not specified—is the witness on whose affidavit the Umpire relies.

Is there any Court in the world where any weight would have been attached to such a proof as this?

The very least that a Court would have required from a company to prove its expenses, would have been to present its books, kept in due form.

Whatever degree of confidence the president of such a company might have inspired personally to the judges forming the Court, and supposing he had no personal interest in the claim, as the decision must appear as given on grounds of justice *even for the adverse party*, that personal confidence could never have sufficed, and he ought to have been compelled to present documents, sufficient in themselves to convince any body that might see them.

In order to judge whether in giving a decision the guaranties of the defendant have been respected, we must put ourselves in the defendant's position. Who could ever be satisfied of being condemned, on the sole foundation of the testimony of his plaintiff, or of the president of a company, pretending to be his creditor?

Are we all obliged to believe, perchance, in the infallibility of the presidents of speculating companies?

In the memorial of this claim it is said that the company had

invested in its undertaking the amount of \$ 303,000, when the stock capital with which it was organized only amounted to \$ 300,000.

This expenditure, and nothing else, is what ought to have been proved by documentary evidence.

But instead of documents, the only proof we receive is the simple assertion of the president of the company, according to which, the subscriptions and sale of shares produced the sum of \$ 235,000.

Now, if this be true, either the shares of the company were not all sold, or they were sold for less than their face value, and either extremity, contradicts the assertion made by Summer Ely, the lawyer of this company, who, in his affidavit, said that the expectation of success was so great, that all the shares were taken by the founders and their friends, and three of these only sold theirs, because they were in needy circumstances. Had it been so, all the shares would have produced to the company their face value.

Still we see by the president's testimony that they produced \$ 65,000, less than their whole value.

This deficit was, according to said testimony, almost all covered by loans to the company, there remaining only a difference of \$ 708,94.

Mr. Collins also says that up to date of his testimony—September 28, 1870—the company was owing for office rent, salaries of its employees, fees of counsel and attorneys, judicial costs &c, the sum of \$ 42,500, and as it was said in the memorial that all the expenses disbursed in the purchase of the mines and works, amounted to \$ 303,000, we necessarily infer that the difference of \$ 38,791 06 between this amount, and the total of ingress and debts of the company, correspond to expenses made after the abandonment of the mines.

And what are the «other expenses,» salaries of the employees, *Counsel and attorney's fees and judicial costs*, that, it is pretended, Mexico must pay?

How much is due to each creditor of the company and what for?

Has not Mexico a right to know it?

Has she not a right to object to each creditor's account?

How much is due to *Ely and to Adams* for their *good services* to the company, and their *ability* in changing a bad speculation into a productive one, at the expense of the meagre Mexican Treasury?

What can be more severe than to say to a defendant: «pay whatever plaintiff pretends to have spent, it matters little what for: compensate even those who have forged and concocted the claim against you?

The Umpire in cases submitted to his decision, had never granted to any claimant before not even the sum of one hundred dollars that the American Commissioner was wont to allow for cost of printing, probably because the Convention, far from authorizing it, makes claimants contribute to defray the expenses of this Commission, deducting up to five per cent of the awards they might obtain.

But in the present case, by admitting the charge of \$42,500, in which are included lawyer's and attorney's fees, and the judicial expenses, without any specification whatever, the expenses incurred in the preparation of the claim are surely compensated.

Mexico, at least, has every right to believe it so, because she does not know to what dates, attorneys witnesses, or judicial proceedings, do these expenses charged to her account, correspond.

Perhaps counsellor Chavarria's fees for the verbal petition he,

made to Governor Ortiz de Zárate, or, more likely, for the testimony he gave in the matter in behalf of this claim, are included.

Perhaps Consul Sisson's fees for his certificate in regard to the destruction of a testimony,—which nevertheless was presented—in favor of the claim, by an unknown Mexican, and for the depositions he furnished Adams with, are also charged.

May be the travelling expenses of said Adams to go to Durango and Sinaloa to *make* proofs in behalf of this claim, and the amount he paid to his witnesses, «not for the purpose of suborning them, but, simply as a compensation for the loss of their time,» as it is pretended, are likewise included.

May be Galan and Dana's fees as *translators only* of the testimonies in favor of the company are charged.

Perhaps, finally, that other expenses are charged of which no traces can be found on the files.

Because not all those persons who lend their names to sustain a claim, still more uncertain than the speculation which gave rise to it, consent to do it only for the contingent interest of a percentage they may get.

We read in Bartholow's deposition:

«Assessments have been made by the company from time to time since the *celebration of the treaty* of July 4th 1868 *pro rata* against the individual stockholders, for money with which to prosecute this claim for damages against the Mexican Government.»

And in the memorial we find this very significative idea:

«That in addition to the expenditures in said mines, as aforesaid, said company *have expended* \$30,000, in *conducting their business otherwise than in expenditures of said mines*.

Unfortunately, corruption has gained so much ground now a days, that even persons in good social standing do not seem to be afraid of losing their character by associating their names to a

speculation of this stamp, in which the interests, not of private individuals, but of a whole nation are attacked.

It seems that the belief is generally accepted that to get from the public treasury something to which we have no right, is not indecorous nor contrary to the principles of morality, still less when the defrauded treasury is not that of our own country, nor is there any investigations in the future to be dreaded, unless in times like the present when everything is being investigated.

Even admitting the justice that Mexico should compensate claimants for the expenses incurred in their mining speculation, it would not be just to make her pay the expenditures incurred *in conducting otherwise the business of the company.*



FORCED LOANS NOT COMPENSATED TWICE TO THE COMPANY.

Accepting the basis that this company had spent in its mining speculation and owed up to May 1870 the sum of \$ 341,791.06, *simple because its President has said so*, it is pre-

sumed that in this amount all loans and taxes paid by the company in Mexico are included.

Recourse must be had to obtain this result to a conjecture, as Mr. Collins did not see fit to specify the expenses and payments made by the company.

When the machinery and all the necessary provisions were sent out, Mazatlan, the landing place, was occupied by the French. Some duties must necessarily have been paid to them, *and now Mexico is condemned to reimburse amounts paid to its foreign foe!*

She is also condemned to reimburse to the company all the amounts paid to the legitimate authorities by way of taxes, and forced loans, for which no American claimant has yet obtained any compensation.

There can certainly be no justice in condemning Mexico to pay the same thing twice; first by compensating the company to the full amount of its expenditures in the enterprise, and then to reimburse also the amount of taxes and loans, when it is not even known.

But why is she condemned *once* to this reimbursement?

However prosperous we might *suppose the speculation to be, the amount paid by the company to the enemies of Mexico and the amount it lost by robberies, ought to be charged to losses.* Why should the Mexican Treasury be compelled to compensate them?

R

TAX ON A TRAIN OF WAGGONS IN TRANSIT.

Although when Mexico is condemned to reimburse all amounts paid for loans and taxes, *no discrimination is made between those imposed by the legitimate and the illegitimate authorities*, it was thought advisable to make a special mention of an exaction of which Wm. Clark speaks in the following manner: «Once, when Laguel was superintendent, I was in charge of a large quantity of provisions of the company, that was to be carried to the mines of Tayoltita; but one Colonel Donato Guerra of the republican army of Mexico, in command at the time of that District, exacted a contribution of \$ 600 on the provisions, and I had to pay it before they were permitted to continue their way.»

Admitting the fact to be true as stated, we have that a large cargo from Mazatlan, a port occupied at the time by the enemies of Mexico, on its way to the mines, was taxed in the sum of \$ 600, by an officer of the army.

In the case of J. Jaroslowski no. 896, claimant asked for compensation not of a simple tax he had paid, but for the alleged confiscation by the republican troops of a load proceeding from Matamoros in 1865, and we read in the decision:

«But even if it be true that the goods of the claimant were seized by Mexican troops, the Umpire consider that the Mexican authorities had by the general laws of the war and the Mexican law of August 16, 1863, *the right to confiscate them.*»

In other cases too, and recently in the cases of «Schelenning & Pentenreider» no. 864, the same declaration was repeated.

«The claim»—it is said—«arises out of the seizure of mer-

chandize by troops belonging to the forces under the command of General Cortina. The goods were dispatched by the claimants in June 1865 from Matamoros to Piedras Negras. *But Matamoros was at the time occupied by the imperialist forces, and all intercourse with it was prohibited by the Mexican Government. The forces of that Government were, therefore, justified in seizing and confiscating articles coming from that part, unless their owners or carriers were furnished with a special license, which does not appear to have been the case in this instance.*»

Neither in this case has the existence of a special permit been proven; or even alleged, and it is only by overlooking all the circumstances of the fact, that anything can be made of it to exaggerate the vexations to which this company was said to be a victim, since no attention whatever is paid to consider whether its intercourse with the ennemy was legal or illegal, before condemning the pretended exaction.

Were we to take into account the time at which this company undertook in Mexico a speculation, «the most uncertain of all speculations,» instead of accumulating charges against Mexico, we might turn them all against claimants for their notorious temerity, and for the trade they held with the ennemy of that country.

It almost seems that this company had vinculated its speculation with the state of war, since as soon as it ceased, and precisely when the company might expect to receive some protection, which it was not even entitled to before, for trading with the ennemy, they desisted entirely of all efforts.

Is it just, is it equitable that the Mexican people, who suffered so many direct wrongs by that war, should now have to pay even the imprudence of those foreign speculators who went to establish «the most uncertain of speculations,» in the very midst of combatting forces?

S

PRODUCT «SHOWN» OF THE ORE REDUCED BY THE COMPANY.

To the amount designated by the president of this company as the sum total of its ingress, it has been seen fit to add the product of the ores benefitted at the mines, of which he had not said a word.

And still, however badly organized this company might have been, its president should to have known what were the products of the mines.

Why, then, is it taken for shown that the ores did produce \$17,000?

There is no other data on record about this point than Exall's simple word for it: see his affidavit of *June 11th, 1874*.

Does Exall enjoy, like Collins, the privilege of being believed under his simple word?



What guaranties of veracity do we find in the testimony of this agent of the company, who was so negligent in the fulfilment of his duty?

True it is that some of the witnesses for the defense speak of the ores reduced by the company, but let us see in what terms:

Aquilino Calderon says: «Don Juan and Don Carlos Elde disposed of the silver extracted by the company from the best ores produced.»

Refugio Fonseca adds: «The silver extracted by the company was taken to Durango and Mazatlan. Carlos Mudo—Exall says that this was the name he was known by—paid with it a credit contracted in gambling.»

But Exall comes afterwards, saying that he extracted \$17,000 from twenty tons of ore, and that it is false that the silver extracted was carried to Durango, to pay with it a gambling debt; and this is enough to *accept as proven such a product*, and to consider the charge of its misapplication as destroyed.

And still, few things can be more improbable than that twenty tons of ore should have produced \$ 17,000, and that immediately after having obtained this fabulous result from the speculation, it should have been abandoned  by American speculators. 

T

PROOF AS TO THE ABANDONMENT OF A LARGE AMOUNT OF VALUABLE ORES.

The proofs we find on file in this particular, are these:

Exall says: «At the time of the abandonment we had extracted and carried to the mill from 650 to 750 tons of ore, having an existence at hand of 250 tons more. These ores would have produced to the company over one million of dollars.»

So this honest and discreet superintendent pretends that as twenty tons of ore had produced \$ 17,000, i. e. at the rate of \$ 850 per ton, one thousand tons could yield at the rate of a thousand dollars a ton.

Alfred Green says: «When the company abandoned the mines, I believe there were over a thousand tons of ore, that in my estimation would have yielded at least half a million of dollars».

Geo. C. Collins: «As to the amount of ore extracted from the mines, I only know what I have heard from others.» What a fine president of a company!

James Granger, testifying in behalf of the company: «I believe that the amount of ores extracted, was a little over a thousand tons, or about seven thousand loads.»

John Cole: «I am posted in the fact that the company had extracted and abandoned from a thousand to *a thousand five hundred*, tons of ore, that would have produced from a hundred to a thousand dollars of pure silver a ton, and some even up to two thousand dollars.»

He therefore knew of more existence on hand than the superintendent himself.

Francisco Gamboa: «The piles of ore that I saw, might contain from six to eight thousand loads, and yield from three to eight *marcos* for load, or more.»

This witness says he was damaged by the abandonment of the enterprize, because he had made arrangements with Exall for the transportation of the ore from the mines to the mill, at so much a load.

Loaiza says that at the time of the abandonment, there were from a thousand to *a thousand five hundred* tons of ore extracted.

Chavarria believes, «judging by what he heard from persons well posted.»—Who were they?—«That the value of the ore was about \$2,000,000.» He avers not being an expert in the matter. We are not surprised, since he has given so little sign of being expert in his own profession!

Marcos Mora, *the authority hostile to the company*—if any was so—says that the company had about six thousand tons of ore!

Charles Dahlgren, the Admiral's son, saw the ore of the com-

pany in 1870, and testifies, without giving any reason for it, that not one half of the amount remained then, and there were some signs that what was there, *had been thrown away as of no use*. Still the ore covered about a fourth of an acre of land.

He cannot fix the value of the ore he saw, but believes that even *what was thrown away might have yielded something*. Still, nobody availed himself of it. How rich must those people have been when they did not take the ores, having them at their disposal!

The Admiral's son estimates the value of the rejected ores, of which nobody availed himself—in «no less than one hundred thousand dollars.»

Thomas Bartholow says that when he ceased to be superintendent, there were only about two hundred tons of ore at the mill. His estimate in regard to its probable yield, is based upon the information he received from the person who sold the mines.

In behalf of the defense, we have the following testimonies:

Patricio Camacho: «The company, at a great expense, extracted many loads of ore, *that could not yield enough to cover the expenses.*»

«The sixty loads that Guadalupe Soto took and benefitted, with Granger's permission, did not meet the expenses.»

Bartolo Rodriguez, Ramon Aguirre, Aquilino Calderon, and Refugio Fonseca, testify in the same direction.

James Granger, testifying in behalf of Mexico, says: The ores are yet—1872—to be found at the mill, *and they are worthless*. *The speculation could not produce a cent.*

Andrés Serrano: «The mines have not produced any productive ores. Those abandoned by the Americans, *are pure tepetate*.

Petronilo Santos, Leandro Martinez and Pioquinto Nuñez: «*The minerals extracted are nothing else but tepetate.*»

N. A. Sloan: «At the time I was a clerk of the company, I learnt from the superintendent that a little less than \$6,000 of silver had been extracted. I know there were some ores, but not their amount. The ores exist at the mill, and may yield *about \$5 por ton.*»

Ignacio Manjarrez: «The Company at a great cost, extracted an immense amount of worthless ore. When the mines were abandoned, Guadalupe Soto obtained permission to take and benefit as much ore as he could, but he failed to get any thing out of sixty tons he benefitted. Those mines might have been rich previously; but they were not so in the hands of the company. The company extracted over three thousand loads, which it divided in three classes; but they were entirely worthless.»

«Its first essays, yielded *there or four ounces of silver per load.*

«It then benefitted sixty loads, *that did not yield enough, even to pay the laborers employed in picking the ores.*»

Martin Delgado: «I know, because it is of public notoriety, that the company piled up a *large* amount of minerals that contains no silver.»

Miguel Laveaga: «I know, and it is a notorious fact, that they piled up a large amount of tepetate, that contained no gold, nor silver.»

«A part of this stone was benefitted, *and it did not cover the wages of the laborers employed in selecting it.* Guadalupe Soto did not obtain anything out of the amount he benefitted with Granger's permission.»

Agapito Arnoldi: «It is possible that the company's mines may produce from eighty to a hundred loads a month, not of

good ores but of *tepetate*.» *It is a notorious fact that they wont produce anything else.»*

Nepomuceno Manjarrez: «The Company extracted about there thousand load of stone.»

«In May 1866, Laguel came to take charge of the mines and made a favorable report to the company; but as soon as he got posted in the true state of matter, he ordered Bartolo Rodriguez to separate the ores from the *tepetate*; and having obtained in this manner sixty loads, they yielded very littlee silver.»

So, claimant's witnesses and the witnesses in behalf of the defense agree in this point, viz: that the company extracted a large amount of ores, but they disagree *in toto* as to whether said ores were or not of any value.

Why should we receive as reputable claimants witnesses and their testimony as satisfactory, when we find so much exaggeration in the value they attribute to the ores?

Is it more likely that ores of such an extraordinary fineness should have been abandoned than that an improductive speculation should have been given up?

U.

INSUFFICIENCY OF THE EVIDENCE AS TO THE AMOUNT
OF ORES ABANDONED.

As we have already remarked, it seems that it has been taken for granted that twenty tons of ore produced \$17,000 to Exall,

simply because he says so, as there is certainly no other proof on the subject; but perhaps his word is not taken as to the number of tons of ore existing at the mill, and of those extracted from the mines at the time of their abandonment, considering that he fluctuates between 650 and 750 tons, when designating the number of those already transported to the mill; or perhaps because the president of the company said that he knew nothing about it, except what he saw in the testimonies prepared for the present claim.

V

PROOF CONSIDERED AS VERY IMPORTANT, BUT FOR THE ABSCENCE OF WHICH—NOT EXPLAINED—THE COMPANY IS EXCUSED.

Far from entertaining any doubts as to the business being managed with all due regularity, a full conviction is expressed that it was, on the ground, very likely, of data *aliunde* the record, as on the files, on the contrary, we find great signs of irregularity.

It seems somewhat strange that a well regulated company should not present the books where the entries were made of the daily extraction of ores from the mines; but it does not seem strange that the company should *not present its books of money ingress and egress*; it seems strange that the reports that the superintendent of the mines must have sent periodically to the company about the number of tons of ore extracted should

not have been presented; but the total absence of any scientific report on the result of benefit of the ores, or of its product, or the reports relating to the different phases of the business, its decadence and causes, and the special reasons that existed for abandoning the mines, does not seem strange; and lastly, *the absolute want of record of proceedings of the board of bondholders, or of the Managing Board of the company*, does not seem strange either.

Instead of these documentary data,—*the only ones that might constitute a ground for a critical judgment on the true prospect of the business and the real causes of its abandonment*;—testimonies notoriously partial and procured *ad hoc* for, and given by persons selected by claimants, are accepted as satisfactory evidence, and it is only when certain data are needed not for the reimbursement of sums actually expended,—because so far as these are concerned, the simple affirmation of the president of the company is considered enough—but to award a positive gain «in the most uncertain of speculations» that the books are missed.

And yet, when even the few required data, which, as it is said, claimants could have produced are not to be found on file, why should this wilful default be excused, when claimants have not even taken, as it is added, the trouble of explainning its absence?

W

It has been said that the superintendent of the mines estimated in about a thousand the number of tons of ore extracted from the mines at the time of their abandonment, and he valued

them, with notorious exaggeration, in the sum of one million of dollars.

A larger number of tons but of less value are mentioned by other *witnesses* in behalf of claimants.

But, without denying to Exall and such witnesses their knowledge in the matter, it is admitted, not that they told an untruth to benefit the company, but that they might have made a mistake in their estimates, because even in sight of a large amount of ores the most intelligent persons may be deceived as to its quantity and especially as to its average value.

With regard to the witnesses for the defense *no merit whatever is attached to their assertions on this point.*

The assertion that the ores abandoned by Exall should be so poor that its benefit should not pay, is rejected as an impossibility.

X

VALUE OF THE ABANDONED ORES; MANNER IN WHICH IT IS DETERMINED.

Notwithstanding the difficulty of determining the value of the ore extracted from the Company's mines, *their quantity and quality not being known*, it is declared in the decision, that it ought to produce necessarily some profit, as if it was an impossibility that anything else but valuable ores could be extracted from mines that were once rich; and as if it was impossible that

Exall should have selected and benefitted for his own profit, the best ores, as is stated by the witnesses for the defense.

And still, the very fact that Exall abandoned the mines as soon as he benefitted the ores for the first time, employing a new proceeding at a very high cost,—as he himself says—should be considered as a proof of the improductiveness of the speculation.

Were it true that at the beginning of 1868 twenty tons of ore had really produced \$17,000 to Exall, how can we believe that on the 20th of March of the same year, *when the war in Mexico was all over, the legitimate authorities had been reinstated, and when, consequently, he might expect to obtain an efficacious protection by applying for it, even to the supreme authority of the Republic, if it was necessary, that he should have abandoned such a fabulously rich enterprise?*

When the amount of \$100,000 is assigned as the value of the ores extracted from the company's mines, the possibility is admitted that this amount might be *less* than the true value of the ores; *but there seem to be no doubts entertained that it could be more than its true value.*

The injury that this estimate might inflict on the company's interests, is attributed to the absence of all documentary evidence; *but no reason whatever is given as to the greater injury that such an estimate, if excessive, might cause to the defendant.*

And yet, who is to blame for the absence of the data necessary to form an estimate with some accuracy?

Nobody else but claimants whose duty it was to present such data, by showing their books and such other vouchers as would conduce to the desired effect.

It was impossible for the Mexican Government to present those documents.

How, then, can there be any justice in making the Mexican Government resent the consequences of a neglect imputable to the other party?

In all the Courts of the world when the plaintiff does not prove satisfactorily what amount has he a right to perceive, nothing is granted to him, and this Commission has recognized in its decisions, the justice of such a practice.

In the decision of the case of Hale and Parker; no. 548, we read:

«The Umpire is unable to make an award, even if the evidence justified his doing so, *because it is not shown what were the number of the cattle in question.*»

Even the American Commissioner has sometimes recognized the justice of this practice. In deciding the case no. 614 of Lambert Ireland, he said:

«If Mexican authorities appropriated or destroyed property, the proof should show who the authorities were; when they committed the acts complained of, what property they took or destroyed *and what its value was.* Nothing of this sort is done *although a mining company is supposed to keep books,* to possess plenty of evidence of the wrongs and *to be managed by intelligent superintendents.* The claim *must* now be rejected.»

For the identical reason the claim of this company should have been rejected *in toto.*

But since it has been granted the privilege of having its pretensions attended to, when it has not even made an excuse for not having presented any documentary evidence, all the advan-

tages ought not be thrown on its side, disregarding entirely the danger of imposing unjustly a burden, very heavy indeed, on Mexico.

If, then, besides granting to the company instead of profits, an interest of six per cent on all the capital its president *says* was invested, not in the speculation alone, but also in house rent in New York, lawyers and attorneys' fees, judicial expenses &c., there is a determination to estimate by mere *conjecture* the value of the ores extracted from the mines, notwithstanding the admission that it is through the company's fault that the necessary data are wanting; at least, the estimate of said value ought to be reduced to its *minimum*.

How many tons of ore are supposed to have been abandoned outside of the mines?

Perhaps one thousand, the *largest amount* designated by the superintendent.

Now, as the American ton contains six Mexican *cargas* [loads] and two hundred pounds over, a thousand tons, would be equivalent to 6,006 *cargas*, 200 pounds.

The value of the *carga* of ore, placed out of the mine, must be six dollars, the lowest figure, in order that its reduction may pay, as this operation costs from four to five dollars.

In a thousand tons of ore extracted from a mine there must be a large portion, the reduction of which cannot pay, and we have the best proof that there was such ore in the thousand tons, in the fact, that even the most partial witnesses in behalf of the claim, testified that in 1870 and 1872, there still existed a big pile of the ore, which anybody could have taken; and only Exall could have entertained the queer notion that the *tepetate* that existed out of the mines, *had been placed there by the enemies of the company*.

It is possible, though not probable, that a portion of the aban

doned ores should produce a little over two dollars, free of cost, per *carga*; but as a larger portion would not produce anything at all, the largest figure at which the whole concern can be estimated at, is \$12,012.

The undersigned has obtained the data on which this estimate is based from Sr. Don Mariano Bárcena, Professor of Mineralogy, and Sr. Don. José María Becerra, Expert in mines of the State of Chihuahua, who knows well the mines of the District of San Dimas in Durango, speaking of which he says that its ores are what is called «rebeldes»—rebellious,—because their reduction, requires more expense and labor than the generality of ores. Both these Gentlemen are now in Philadelphia.*

* Under the heading of «*Really productive mines*,» we read in the *Minero Mexicano*: «The official data furnished by the Inspector of Mines of Nevada, give us the opportunity of valuing the considerable profits reaped by some of the companies of that mineral District. We give here the estimates we have been able to form in view of those data.

During the first three months of the present year the Belcher company extracted 89,292 tons of ore, producing in bulk \$1,025,738; the cost of extraction amounted to \$779,714. 66, leaving a net profit of \$249,023, 34.

The «Consolidated Virginia» extracted 64,462 tons: total product \$8,362,876: expenditure, \$1,582,596, leaving as net profit \$6,680, 280.

The «Ophir Co. » extracted 8,180 tons, producing \$326,075, 03: deducting \$175,860 for expenses, a balance of \$147,215, 03 remained as profit.

It follows from these data that mines really productive are considered those yielding as follows:

The mines of the Belcher company produced for every thousand tons of ore \$6,840, 58.

The «Consolidated Virginia mines» for every thousand tons \$10,361, 28.

The Ophir mines for every thousand tons \$18,107 68.

We have, then, that only one of these companies obtained a little over \$100,000 for a thousand tons of ore, whilst of the other two, one obtained \$18,107, 63 and the other \$6,840, 58. Still, even the mines of the last named company are considered as *really productive*, thus placing the mines of the Consolidated Virginia in the category of the *immensely rich* mines.

The mines of the claiming company are placed by the decision in the same category, since the products of *one thousand tons, or less, of its ores, are estimated at one hundred thousand dollars.*

Y

TIME THAT MIGHT BE REQUIRED FOR REDUCING THE
ABANDONED ORES.

One year may be enough to benefit as many as one thousand tons of ore; but, had the company sufficient funds to cover the necessary expenses?

If we are to believe in the memorial, when the mines were abandoned, the company had not only exhausted all the capital to which it could legally extend its engagements, but three thousand dollars over.

When the Superintendent left Mexico he had to borrow money to cover his travelling expenses, and according to the person who lent him the money, he has not been reimbursed of it yet.

It is, therefore, not only possible that the company might not have been able to benefit the ores during a whole year, but it might also happen that it should never have had sufficient funds to that effect, in which case the ores would have been entirely unproductive to the company.

Z

THE REASON WHY NO INTEREST IS ALLOWED BEFORE THE ABANDONMENT
OF THE MINES TOOK PLACE.

According to the decision, it has not been shown that the company received any dividends before the 20th of March, 1868.

President Collins says: «Said company has not made any dividend, nor received any returns, nor been reimbursed for said expenditures in whole or in part. And the silver ores which said company had extracted from their mines, was their reliance for getting back the moneys so expended and owing by them, said company.»

«As to the circumstances causing and attending said abandonment, the situation and condition of said mines and property of said company at the time, *the quantity of silver ore which the company had then extracted at the mines. . . .* deponent has no knowledge except what is derived from the statements of others and the deposition of others *made in this matter*, which deponent believes to be true.»

Therefore, the president of the company without having any reliable documents as to the quantity and value of the ores extracted from the mines, relied on *such possible value to cover the expenditures of, and the debts contracted by the company.*

In speaking of the mines, the value of which he estimates in not less than three millions of dollars, he adds: «Had said company been left in the quiet possession of said mines and property, *as deposed to by others in the matter*, deponent, as already

stated, having no personal knowledge of the quantity and value of those ores. . . .»

Mr. Collins, relying on what others said, believed that the product of the ores extracted would suffice only to cover the expenses of the company and its debts, and that not until afterwards would they have commenced to perceive any profits.

This being the case, if, as it is presumed in the decision, the ores could produce a hundred thousand dollars—admitting that the necessary funds for its benefit could be counted on,—the company would not have been able to pay even its debts, if these amounted to the sum fixed by Mr. Collins in his testimony of September, 1870, and much less to pay any dividend out of the profits.

Therefore, no interest should be granted from November 20th 1868 on the value of the bonds, since the interest is awarded in lieu of the dividends.

Admitting as a standpoint that up to March 20th 1869 the company would have received the sum of \$100,000 as the first product of its mines, even then it could not have paid its debts, because if it did, why, it would have been left without any funds to prosecute the works.

Therefore, at the very best and admitting that *the speculation was really a productive one* it can only be supposed that it would begin to yield profits for the bondholders from 1870, or afterwards.

There is, then, no ground whatever to grant interest from the day of the alleged abandonment of the mines, which took place exactly at the beginning of the works, and when the company had no funds left.

CONCLUSION.

The undersigned, fearing that a *resumé* of his remarks on the final decision of this case, would only increase the length of this argument without any object, will confine himself now to request the Umpire, with all due respect, that if he finds in them any thing deserving his attention, not to decline, on any account, to take them into consideration, thus affording additional proof that, as a strict judge and an honest man, he is only guided in the fulfilment of his high functions, by the inspirations of justice and equity.

Should he finally confirm the decision, thus compelling the Mexican people to take away from their meagre rents three hundred thousand dollars annually for over two years out, in the benefit of a foreign company, let it be after examining carefully all the circumstances of the case; *and with the most perfect conviction that his decision is entirely just and in strict conformity with the principles of public law, and that there is not any error to amend, committed in the first appreciation of said circumstances.*

But should it appear that an error has been committed, why should not be corrected? Is there any kind of considerations that can prevent an honest man, a depositary of the confidence of two nations, a judge whose only rule of action are equity, justice and good faith, from rectifying an error?

At some future time, if not to day, the attention of the world, or at least of those who may study the decisions of this international Commission, will be called to the following facts:

A company organized in New York, without even the knowledge of the Government of Mexico, sent its agents to that country when in a state of war, to undertake the most uncertain of speculations, a mining speculation; these agents bought some mines, from its owner, whose principal reason for selling was the want of security in the District where they were located, it being a desert and at a great distance from the superior authorities; the capital of the company being partly exhausted by robberies and exactions committed by the forces of the two contending parties, between whom said agents carried on an illegal trade, and partly in fitting out the speculation, when the expenditures made were already in excess of the amount of the capital, and at the very beginning of the works, when the war was over, the speculation is abandoned; no complaint or protest was then produced against the authorities of the country, charging them with the responsibility of the abandonment; nearly two years afterwards the testimonies of the employees of the company were for the first time procured, imputing the failure of the speculation to said authorities; one person was sent out to prepare some other testimonies, in that same direction, of persons also addicted to the company; *no document of any kind was ever presented to prove the course taken to obtain the protection of the superior authorities, nor the circumstances of the speculation, its prospects of success, expenditures, products, &c., &c.* Neither were certain proclamations and offers to foreigners inviting them to send their capitals to that country, *on the existence of which the claim was founded*, ever presented; sundry claims entirely similar to this, were dismissed, even by the American Commissioner; he, nevertheless proposed that this company should be

indemnified only in the amount *it had actually spent in the speculation, and interest thereon*; the Umpire fixed said amount *on the sole ground of the testimony of the president of the company, and granted moreover a considerable sum for the conjectural value of the ores extracted from the mines*; the Government of Mexico, presenting some remarks about the foundation of the decision, requested the Umpire to reconsider the case, and, in view of said remarks, and above all, *taking again conscientiously into consideration the circumstances of the case, he revoked, modified or confirmed his decision definitely.*¹

The public opinion will give its verdict.

Heavens grant that it may reflect all honor to the author of the final decision!

[Signed.]

ELEUTERIO AVILA.

Filed, September 19th. 1876.

¹ For the declaration of the Umpire in regard to this motion, see the pamphlet containing the documents relating to Weil's claim.

ERRATA.

Page.	Line.		
1	4	the United States in.....	for: the United States, in
2	26	injustifiable	„ unjustifiable
5	2	which is.....	„ which is
5	20	daily	„ daily
5	27	Still	„ Still,
8	26	notwithstanding	„ notwithstanding
9	6	vexations	„ vexatious
„	25	whit	„ with
10	1	reimbuzsed	„ reimbursed
12	6	unsufficient.....	„ insufficient
„	8	kep.	„ kept
„	15 y 16	necessarily	„ necessarily
„	23	justiable.....	„ justifiable
„	26	becauce.....	„ because
13	9	will be.....	„ will he be
14	9	foreing.....	„ foreign
15	5	capactty.....	„ capacity
„	8	corporator.	„ corporators
„	26	againts	„ against
16	19	makes it is binding.....	„ makes it binding
„	23	citezens or subjects..	„ citizens or subjects.
17	14	stipulalation,	„ stipulation
„	„	bindinng	„ binding
18	6	onght.....	„ ought
„	14	ot	„ of
„	17	others.....	„ other
18	1st line	of the note: the.....	„ the
19	32	necesity.	„ necessity
20	2	containging.....	„ containing
„	10	some,	„ some
21	15	sights... ..	„ rights
„	19	functionnay.....	„ functionary
22	15 y 16	infortunate.....	„ unfortunate
„	13	deem.....	„ deemed
„	32	undertaking	„ undertakings
„	„	difficu'tties	„ difficulties

Page	Line		
23	15 y 16	indiscreet.....	for: indiscreet
24	5	then.....	„ them
25	24 y 25	possessreal.....	„ possess real
27	5	foreing.....	„ foreign
28	4	situatod.....	„ situated
„	22	ill-vill.....	„ ill-will
„	25	axasperated.....	„ exasperated
29	20	assasinated.....	„ assassinated
30	9	for.....	„ of
„	17	assasination.....	„ assassination
„	25	but.....	„ and
„	30	circunstance.....	„ circumstance
31	2 y 3	grabled.....	„ grabbed
„	4	ambibitious.....	„ ambitious
„	8	only.....	„ only
„	10	threatners.....	„ threateners
„	18 y 19	even matter.....	„ even a matter
„	22	assasination.....	„ assassination
32	12	whic hat.....	„ which at
33	16	responsability.....	„ responsibility
36	22	hostilly.....	„ hostility,
37	24	ever.....	„ over
„	27	be.....	„ he
39	22	where upon.....	„ whereupon
40	30	consul.....	„ Consul
41	13	groser.....	„ grosser
„	14	claim.....	„ claim
„	31	commonweal.....	„ common-weal
42	5 y 6	abnegation and that.....	„ abnegation that
43	15	spaniard.....	„ Spaniard
„	26	knows.....	„ knows
44	4	exactions.....	„ exactions
„	6	all this.....	„ all this
„	9	nimes.....	„ mines
45	11	accusser.....	„ accuser
„	14	or owe.....	„ or owe
45	26	wntruth.....	„ untruth
„	28	as win.....	„ was in
„	32	eye-iwitness.....	„ eye-witness
46	21	of.....	„ in
49	16	necesity.....	„ necessity
50	7	have not due.....	„ have not received due
„	14	aminated.....	„ animated
„	15	mexicans.....	„ Mexicans
51	13	in New York.....	„ in New York,
„	18	mexican.....	„ Mexican
„	27	Therefore.....	„ Therefore,
53	14	muting.....	„ mutiny

Page.	Line.		
53	18	trough.....	for: through
„	20	witeness	„ witness
„	21	eft.....	„ left
54	28	vexations	„ vexatious
„	29	comany.....	„ company
55	32	extrated	„ extracted
58	2	machinary	„ machinery
„	5	and.....	„ and
„	11	note.....	„ not
„	17	nimes.	„ mines
59	13	superior Authorities.....	„ highest authorities
60	20	af.....	„ of
„	24	compose.....	„ compare
„	30	lhe	„ the
62	2	evidence	„ evidence.
64	3	Langhland & C ^o	„ Laughland & C. ^o
68	note	beievedthat	„ believed that
73	5	3td.....	„ 3rd
75	24	personally	„ personally
78	14	woth.....	„ worth
„	16	costed.....	„ cost
85	27	dividens.....	„ dividends
88	17	before not.....	„ before, not
„	29	attorneys witnesses.....	„ attorneys, witnesses
96	26 y 27	being expert.....	„ being an expert
97	3	thrwon.....	„ thrown
„	4	Still the ore.....	„ Still, the ore
„	22	permmision.	„ permission
„	26	worthless,.....	„ worthless.
98	18	there	„ three
„	3	there.	„ three
„	4	load	„ loads
99	9	litlee.	„ little
100	4	abandomnet	„ abandonment
101	1	totala bscence.....	„ total absence
101	7	Managiny	„ Managing
„	22	explainnig.....	„ explaining
102	19	difficultty	„ difficulty
106	16	of the note—10,361, 28	„ 103,631, 28
„	24	tousand.....	„ thousand

SUPREME COURT OF JUSTICE OF MEXICO

SUIT OF "AMPARO"

PUT FORWARD BY

SRA DOLORES QUESADA DE ALMONTE

AGAINST AN ORDER

OF THE TREASURY DEPARTMENT

of August 29, 1867,
which ordered the confiscation of the house situated in "San Juan"
Street, n° 10, of the property of

DON JUAN N. ALMONTE

*Translated from the original Spanish
by A. CESAR DIAZ.*

CITY OF MEXICO
Government Printing Office,
in charge of Sabas A. y Munguia.

1879

1432

SUPREME COURT OF JUSTICE OF MEXICO

SUIT OF "AMPARO"

PUT FORWARD BY

SEÑORA DOLORES QUESADA DE ALMONTE

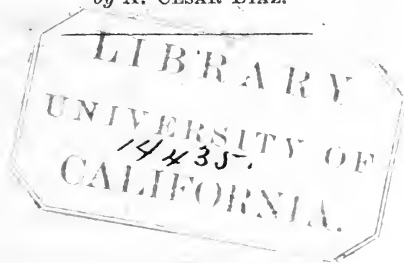
AGAINST AN ORDER

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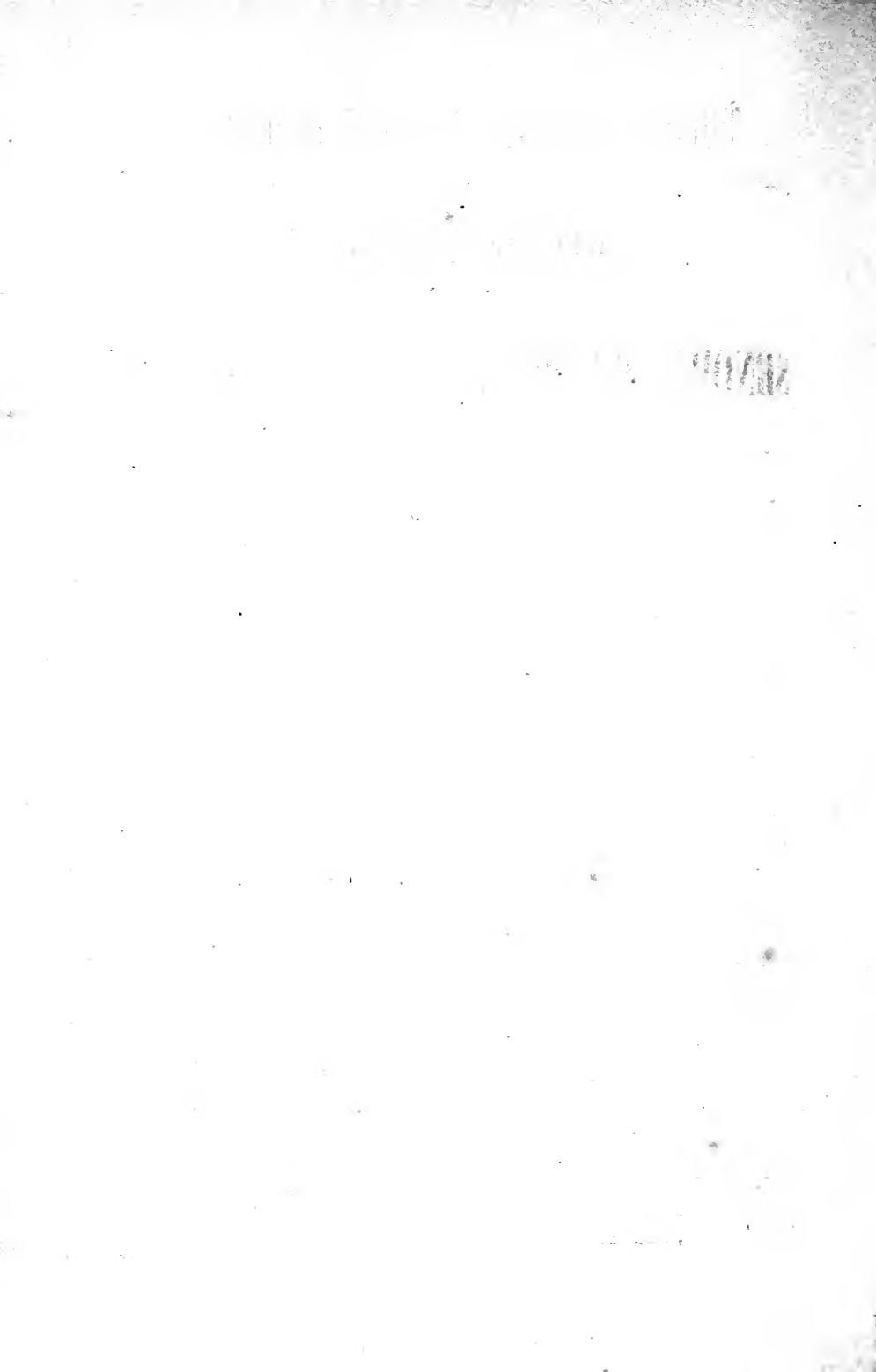
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CITY OF MEXICO
Government Printing Office,
in charge of Sabas A. y Munguía.

1879



PKS. 242.14

SUPREME COURT OF JUSTICE

FULL ATTENDANCE

Documents comprising the principal evidence regarding the Suit of « Amparo »¹ put forward by Señora Dolores Quesada de Almonte, against the Treasury Department, which ordered the confiscation of the house situated in San Juan Street, n. 10.

Petition for "Amparo."

TO THE 1st. DISTRICT JUDGE:

I, Dolores Quesada de Almonte, as Administratrix of the Intestate of my deceased husband, General Juan N. Almonte, before you, with due respect, state: that by the deeds which I herewith inclose in due form, it is proven that the house marked n^o 10 and situated in the 1st. San Juan Street, was acquired by my husband by virtue of the purchase which the latter made of the same from Mr. Nathaniel Davidson, on the twenty-sixth day of August, year one thousand eight hundred and sixty-four.

The part which my deceased husband took in the Government of the Empire, was the cause that my property should

¹ The suit of *Amparo* in Mexico, is a proceeding somewhat similar to the writ of *Habeas Corpus* of American and British law; except that in the present case, it refers to property and not to individuals, although it may embrace both.

fall under the penalties imposed by the Decree of the 16th. of August, 1863, and by the laws which were subsequently promulgated against all who served under the said order of things.

Among the aforesaid property was comprised the house situated in the 1st. San Juan Street n° 10, of which property, Mr. Almonte and we his heirs, have been deprived for some time by order of the Treasury Department, issued in accordance with the laws of confiscation and which took from my husband the only patrimony bequeathed to his children in order to insure their support after his demise.

The order of the Treasury Department and the laws of confiscation promulgated in the year 1863, violated in the person of Mr. Almonte, and subsequently in those of his heirs, several of the guarantees granted by the Fundamental Code of the Republic, in strict observance of which should ever be all the acts of the authorities emanating from the same as well as those of all the citizens who live under its protection and safeguard.

Article 16th. of the Federal Constitution ordains that no person shall be molested either in his domicile, papers, goods or property, unless it be by virtue of a written order issued by the competent authority; and Article 21st. of the same Code establishes that the application of all penalties is an attribute which belongs wholly and exclusively to the judicial authority.

Let us suppose for a moment that my husband made himself liable to the penalties imposed by the decree of the 16th. of August, 1863; that confiscation is tolerated amongst us, and that the authorities who issued the said decree were competent enough to promulgate and enforce new laws.

I now ask, without granting that the above suppositions

are well founded: can we hold that the Council of Ministers, to whom Article 7th. of the law of August 10th., 1863, gave authority to resolve upon all these questions, was a competent authority to determine upon the same, when the said Council absolutely lacked all judicial functions? Certainly not; because Article 21st., already referred to, provides that the right to impose penalties belongs exclusively to the judicial power; and Article 50th. of the Constitution expressly forbids the exercise of the attributes of two powers by any one of the three into which the Federation is divided.

My arguments are now set forth, under the supposition that confiscation were admitted amongst us: but, even if this were so, that penalty could not be imposed upon Mr. Almonte, until he had been duly tried by the competent Courts, because otherwise he would have been sentenced without a hearing, and this is not admitted by any legislation of the world.

Story, in his Commentaries on the Constitution of the United States, sets forth in paragraph n^o 211, the following doctrine: "The third clause of the third article, contains a constitutional definition of the crime of treason, (which will hereafter be treated separately), and then proceeds in the same section stipulating that Congress shall have the power to impose punishment for treason. No charge for treason shall give rise to the loss of hereditary rights or to confiscation, except during the lifetime of the party thus accused."

Article 21st. of our Constitution grants several guarantees to the accused, amongst them is that they shall have a hearing personally in their defense or by parties worthy of their confidence, and that the cause shall be drawn up in conformity with the regulations established in each suit.

This being the case, and as Mr. Almonte was not submitted during his lifetime to any trial, nor did he have a hearing in his defense, nor did he enjoy any of the guarantees granted to him by article 20, already mentioned, no penalty whatever could be imposed upon him. And, why? Because a penalty presupposes the existence of an offence, and the latter the existence of some legal process or law-suit that has investigated the matter and pointed out the party who committed the said offence.

When all these circumstances are lacking, I really cannot see why any penalty of importance could be imposed upon Mr. Almonte or his family, in the absence of some proceedings that might have declared him guilty; because to admit anything to the contrary would be to tolerate the existence of a sequel or a consequence without an antecedent or a precedent to produce the former. It would be equivalent to admitting the existence of a son and denying at the same time the existence of the mother who bore him; and this is such an absurdity, either in the natural as well as in the civil order of things, that it can never agree with reason or common sense.

But in support of what I allege, I count furthermore upon articles 22 and 50 of our Fundamental Code, which has been referred to several times in the course of this petition; said articles reject forever the penalty of confiscation of any property, and the reunion of any two of the powers of the Nation in any single one of the three branches into which the authority of the Government is divided.

Suffice it to enunciate the first of the above-mentioned articles in order to show that his patrimony could never have been deprived of his property, because negative laws are absolute, and in no case whatever can their effects be

suspended; and much less when the law of the 16th. of August, 1863, was not promulgated by the Congress of the Union, to whom this authority belonged in accordance with the precepts established in fraction 30 of article 72 of the said Federal Constitution.

It will probably be alleged against me that the law relative to confiscations was issued by the Executive when the latter was invested with extraordinary powers. But aside from the fact that this does not invalidate any of the arguments presented in the manifestation of the rights which I represent, the house n° 10 situated in the 1st. Street of San Juan was taken from the patrimony of my husband during the latter part of the year 1867, and during a time when, peace being restored, all the federal powers worked freely within their especial spheres. Thus, not even this argument, to which resort might be had as a last resource, is to be admitted, in resolving the question which gives rise to this suit of *amparo*.

For all the reasons above set forth, I beg that you will be pleased to consider my petition as presented in due form and within the legal time, and that you will grant *amparo* (protection), to the intestate I hereby represent, as against the acts of the Treasury Department, which, founded upon the law of the 16th. of August, 1863, confiscated the house marked with n° 10 situated in the 1st. Street of San Juan, from General Almonte, upon the ground that by the said acts were violated in his person the guarantees granted to him by articles 16, 20, 21, 22, 27 and 50 of the Federal Constitution; and that you will likewise declare definitively that the Justice of the Union protects and shields me against the said acts, and in accordance with what is provided for in article 12, paragraph 1st., of the law of January 20, 1869.

I beg the Court to grant my request, because it is just, and I duly protest all the law requires.

Mexico, March 15, 1878.—(Signed.)—*Dolores Quesada de Almonte*.—*Manuel Lombardo*.—As of counsel for petitioner.

Report of the Treasury Department.

Mexican Republic.—Department of the Treasury and Public Credit.—Section 2d.—Nº 3874.

This Department has become acquainted with the communication of the Court you preside, dated the 20th. inst., to which you accompany a copy of the petition presented by Mrs. Dolores Quesada de Almonte asking *amparo*, (protection) against the order of the National Government, who declared the confiscation of the goods and property belonging to Don Juan N. Almonte, amongst which is included a house marked with nº 10 and situated in the 1st. Street of San Juan in this City, which has given rise to the said petition.

It is a fact that the National Government, by an order issued on the 20th. of August, 1867, declared the confiscation of all the property belonging to various infident Mexicans as that Court may see from the exhibits nºs 1 and 2, in which was declared that the said Mexicans, among whom appeared Almonte, were guilty, with aggravating circumstances, as that of notoriety, and others to which the undersigned waives to allude; because in order to inform that Court in compliance with the law of *amparo*, it is not necessary to disturb the ashes of those who carried out the foreign Intervention, nor to pronounce the sentence which History has already applied to them.

The National Government was invested with the most ample faculties by act of Congress passed on the 27th. of May, 1863, whose object was the salvation of the Republic by rejecting the foreign enemy.

The said act of Congress extended the suspension of the guarantees granted by the Constitution, and therefore, anything that may be alleged as a violation of the said guarantees, cannot be sustained, because it would be equivalent to questioning the right of self-preservation.

Therefore, the *amparo* which is now asked, after the lapse of more than ten years, on account of the enforcement of the laws which may be properly called of "public safety," and in consequence of the punishments which may be affirmed were decreed, approved and sanctioned by the Nation itself, could not be granted without justifying more or less indirectly the atrocious acts of the Intervention, and without throwing a blemish upon the patriotism, proclaimed by all civilized countries, of those who placed themselves at the head of the people in order to eject from their native country the foreign invader.

Now that I have the honor to reply to your said communication by order of the President, I must call your attention to the very exceptional circumstances under which were issued and enforced the law of ample powers and that of the 6th. of August of the same year, the latter being the one which was applied to Almonte; and I likewise call your attention to the confusion which would be occasioned by the judicial examination of acts already consummated by virtue of discretional powers, as though the fundamental law which was saved together with our nationality, could possibly serve in the course of time, in favor of those who attacked both their country and her Constitution.

From the law of the 11th. of December, 1861, which was issued in the presence of the enemy who was invading the territory of Mexico, as were also the subsequent laws, up to that of the 27th. of May, 1863, which, according to its tenor was to be in force until one month after the meeting of the National Congress,—and I call very particularly the attention of your Court to this latter provision,—the powers granted to the Executive were *unlimited*, and the suspension of guarantees was general.

For these reasons the Executive was empowered to issue laws like that of the 6th. of August, 1863, which in Article 1st. designated the cases of high treason and imposed the penalty of confiscation as well as the corresponding corporal punishment; and when, owing to the magnanimity which was naturally produced by the final triumph of the Republic, the penalty was reduced to mere confiscation by the law of the 12th. of August, 1867, in this amnesty were not included the most responsible parties, as may be seen in article 2 of the last mentioned law; and owing to this very just exception, as I stated at the beginning of this communication, there was issued on the 20th. of the same month and year, a supplementary law or explanation regarding those parties who should suffer definitively the penalty of confiscation, the provisions of which measure were carried into effect within the time fixed for the duration of the ample powers, because Congress did not meet until several months after.

Treating this question in its general importance, and without discussing the extension which article 29 of the Constitution may have, by which the suspension of guarantees is authorized and the amplification of the powers granted to the Executive, because the very salvation of the country

refutes any objection that might be made in this sense; I will confine myself to call the attention of your court to the copy of the account n° 162 which has been asked of the Federal Comptroller's Department which I inclose with document n° 3, and from which it appears that for the sale of house n° 10 of the 1st. Street of San Juan, it was previously appraised, duly advertised, and that when sold at auction, according to law, the offer of general Francisco Paz was admitted, it being two thirds and one dollar more of the price fixed and published.—Mexico, March 22, 1878.—(Signed.)—*Romero*.—To the Judge of the 1st. District Court of Mexico.—Present.

Opinion of the District Attorney

TO THE 1st. DISTRICT JUDGE:

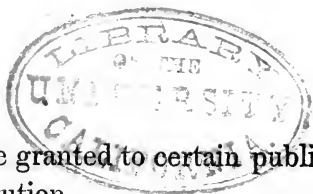
The District Attorney states: That on the 14th. of October, 1867, the Government of the Republic sold at auction, through the Treasury Department, the house marked n° 10 situated in the 1st. Street of San Juan, which was confiscated from Mr. Juan N. Almonte, on account of the part he had taken in the French Intervention and in the establishment of the so-called Empire; the said sale was carried out with the usual legal formalities; that is to say, it was published three times, the house was appraised by a competent party, and finally turned over to the purchaser for two thirds of its fixed price.

This sale at auction under the conditions above expressed,

and which fully corroborates the report given by the Treasury Department, embraces, as may be seen at once, a multitude of constitutional infractions; but the latter ought not to be discussed, inasmuch as the said sale was carried out precisely by virtue of the suspension of the Constitution and of the extraordinary powers granted to the Executive; so that our examination of this case should be directed towards fixing the scope of those same ample powers, and consequently, the legality of the acts of the Executive.

For reasons to which the war of intervention gave rise, the Congress of the Union issued on the 7th. of June, 1861, a law of extraordinary powers, which was amplified and renewed on the 11th. of December of the same year: on May 3d., 1862, and on the 29th. of October of the same year, the said ample powers were extended, and on May 23d., 1863, a few days previous to the departure of the Government from the Capital, a last law was passed regarding the same subject.

The simple perusal of the acts, which were renewed several times, shows very clearly that the guarantees suspended in May, 1863, were those established in articles 5th., 7th., 9th., 10th., 11th., 13th., 18th., 19th., 16th., 21st., 26th. and 27th.; and the same laws also authorized the Executive in the most unlimited manner to act as might be convenient, in view of the very grave circumstances through which the country was passing, with no other restriction than that of saving the independence and integrity of the national territory, the form of government established by the Constitution and the principles and laws of Reform. The suspension of the said guarantees was to last until one month after the meeting of Congress, and it did not include the decision of controversies among private individuals nor the violation of the



constitutional privileges which are granted to certain public officers by article 4 of the Constitution.

By virtue of the said ample powers, the Executive at once commenced to make use of the right of legislating, and one of the subjects regarding which laws were thus passed, was the crime of treason and the penalties to be imposed for the commission of the same, and among the latter was established the confiscation of property. The law of April 13th., 1862, and those of February 17th., and of the 18th. of July and 16th. of August 1863, fully prove what we have just stated; the latter law being that which we consider the most important, not only because it embraces more points and that it provides the manner in which confiscation was to be carried out, but also because under its provisions was ordered and carried into effect, the confiscation of the property which has given rise to the *amparo* now solicited from the Federal Supreme Court.

If we examine the letter and spirit of the said measure and that of the act of May 23d., 1863, by virtue of which the former was given, the case of Mr. Almonte certainly presents nothing which can be deemed contrary to the said measures. Neither the confiscation nor the manner in which it was carried out, nor the period in which the sale was made, deviate in the least from the provisions contained in the laws above referred to; and it may not be out of place to observe that if, according to the law of the 14th. of August, 1867, the penalty of confiscation was reduced to the payment of a fine, Mr. Almonte was excepted from the enjoyment of that favor; and that the Congress of the Union did not meet until the 20th. of November of the same year, in accordance with the call for elections issued on the 14th. of August; and furthermore, at that time, that is to say, when Congress met,

the confiscation now before us had been definitively carried out, since the sale had taken place on the 14th. of October, as above stated.

But it is likewise proper to interpret the real sense and scope contained in the decree of extraordinary powers, in conformity with which the Executive acted respecting this and other matters.

Upon this subject there are two essential points to be discussed. First: can the Executive legislate? Second: can he do so, establishing the penalty of confiscation?

With regard to the former, it has been sustained in view of articles 50 and 29 of the Constitution, that the Executive is not authorized to legislate in any case, and that the concession of extraordinary powers can only refer to the suspension of individual guarantees in accordance with the precise text of article 29. But if this point be duly considered, we find that the second part of this same article speaks of all the powers which may be deemed necessary in order to insure the independence or public safety in any way threatened; and to this view may be added the argument presented by Mr. Rodriguez in his notes on constitutional law, which is as follows: if the suspension of the guarantees with which the Constitution assures the rights of man be admitted, there is far more reason for suspending, when necessary, the effects of the constitutional law in all that which relates to the forms of political organization and to the powers granted to public officers.

It cannot moreover be said that this apparent confusion of powers destroys the Republican form of government; because, aside from the fact that those powers look towards the preservation of a thousand other institutions which procure the existence of that very form of government, and that in

no way is the latter affected by the said confusion of powers, in certain special cases it becomes necessary, with the object of saving that very form of government, to adhere to certain specified rules which pave the way towards that form, when the latter by itself alone would by no means succeed.

The above suffices, as regards the power of legislating; but before proceeding any farther, it is well to take into consideration another difficulty which is important. Congress granted extraordinary powers to the Executive, whose term expired in 1865, and the latter, of his own accord, extended his term of office in November of the same year, considering himself invested with the powers granted by Congress, the latter not having, in so doing, foreseen this case, upon passing the said act of extraordinary powers. Could the Executive, who commenced a new term in 1865, consider himself as invested with the extraordinary powers granted by Congress in 1863 to the Executive elected in conformity with the Constitution? The undersigned is of opinion that the Executive was right in considering himself thus empowered, founded upon the preambles which preceded the law of November, 1865, by which the presidential term was extended.

Let us now see whether the Executive could legislate, establishing confiscation. This penalty, as is explained by the jurists Messrs. Crispiniano del Castillo and Eulalio Ortega in a very remarkable treatise published in Number 36 of the newspaper called *Los Derechos del Hombre*, is proscribed and condemned by science and civilization: it has been excluded from all modern constitutions, and even the State acknowledges that it has no right to impose the same. Slavery is compared to it on account of the sacred right it affects, and it has never been in force in Mexico, its application having been prohibited *forever* by the Constitution of 1857.

There is something very special, as Messrs. Ortega and Castillo sustain, regarding certain constitutional guarantees, and that is that from their very nature they admit of no suspension, and really they cease to exist from the moment they are suspended: one of those guarantees is the right to hold property, and if the latter be confiscated, the said guarantee disappears forever.

In short, the undersigned is of opinion that for no other reason but because it is odious, dissolving and barbarous, confiscation cannot have been included in the spirit of the general act of Congress of 1863, as could neither have been included in the said act the power of creating slaves or of depriving man of his life, outside of the terms fixed by the Constitution.

The undersigned considers a decision in the present case as fraught with many difficulties, and he has reflected before giving his opinion as far as his limited capacity and the very short space of time he has had at his disposal will permit, regretting that for these reasons he has scarcely been able to point out a few of the serious difficulties this case presents.

The undersigned District Attorney concludes by asking the Court to be pleased to decree as follows:

The Justice of the Union protects and shields Mrs. Dolores Q. de Almonte, administratrix of Mr. Juan N. Almonte against the acts of the Treasury Department, in virtue of which the house belonging to her in the 1st. Street of San Juan was confiscated and sold at auction, because in the person of the complainant were violated the guarantees granted by article 22 of the Federal Constitution.

Mexico, June 3, 1878.—(Signed.)—*J. Algara.*

Sentence of the District Judge.

Mexico, July the twentieth, year one thousand eight hundred and seventy-eight.—After having examined the petition of *amparo* put forward by Mrs. Dolores Quesada de Almonte, as the wife and administratrix of Mr. Juan N. Almonte, and as an appeal against an order of the Executive of the Union issued through the Treasury Department on the 20th. of August, 1867, by virtue of which the house n^o 10 situated in the 1st. Street of San Juan was confiscated, the said house being the property of Juan N. Almonte, on the grounds that the latter had committed treason against his country, which measure has, in the opinion of the complainant, violated the guarantees granted by articles 16, 20, 21, 22, 27 and 50 of the Constitution of the Republic:

After having examined the corresponding report and other evidence as well as the opinion of the District Attorney and all other proofs concerning the case, and:

Whereas the law of May 27, 1863, expressly declared that the suspension of individual guarantees and the concession of extraordinary powers granted to the Executive should last up to thirty days after the first meeting of Congress or before this period should the war with France have come to an end; and that in August, 1867, not only had the French intervention come to an end but also civil war in the country:

Whereas for these reasons, constitutional order having then been reëstablished, the Executive had not the power to order the confiscation of the property belonging to Mr. Juan N. Almonte, which act would involve a violation of the guarantees to which the complainant refers:

For these reasons, and in view of the provisions of articles 101 and 102 of the Federal Constitution and of the law of January 20th., 1869, and in accordance with the opinion of the District Attorney, we hereby declare:

That the Justice of the Union protects and shields Mrs. Dolores Quesada de Almonte, as the wife and administratrix of Mr. Juan N. Almonte, against the order issued by the Treasury Department on the 20th. of August, 1867, in virtue of which was confiscated and sold house n° 10 situated on the 1st. Street of San Juan.

Let this sentence become known, published in the newspapers, and the proceedings sent to the Supreme Court of Justice for their revision.

Thus was it decreed and ordered by the 1st. District Judge: I certify. — (Signed.) — *R. Ramirez.* — *P. de A. Osorno.*

Order of February 19, 1879.

There were present at this session: Chief Justice Vallarta; Magistrates of the Court, Altamirano, Montes, Martinez de Castro, Alas, Bautista, Avila, Guzman, Saldaña and the Attorney-General.

Absent: Messrs. Ramirez, Ogazon and Blanco.

The order of the previous session having been approved, the Secretary Gonzalez Angulo gave an account of the suit of *amparo* put forward by Mrs. Dolores Quesada de Almonte, against the confiscation of house n° 10 situated in the 1st. Street of San Juan. Justice Montes spoke in favor of the petitioner's demand and Chief Justice Vallarta against it, the latter retaining the floor for the following session.

Order of February 20, 1879.

There were present at this session: Chief Justice Vallarta, and Magistrates Altamirano, Alas, Martinez de Castro, Bautista, Vazquez, Avila, Guzman, Saldaña and the Attorney-General.

Absent, with leave: Messrs. Ramirez, Ogazon, Montes and Blanco.

The order of the previous session was approved. Chief Justice Vallarta concluded his argument regarding the suit of *amparo* put forward by Mrs. Dolores Quesada de Almonte. Then Mr. Bautista spoke in favor of the said *amparo* and Messrs. Altamirano and Guzman spoke against it.

The debate having closed, a vote was taken with regard to the sentence of the 1st. District Judge, which sentence grants *amparo* (or protection) to Mrs. Almonte, and the said sentence was reversed by the votes of Messrs. Saldaña, Guzman, Avila, Vazquez, Alas, Altamirano and Chief-Justice Vallarta; and the Attorney-General and Mr. Bautista voted in favor of the said *amparo* as well as Mr. Montes, who had left his vote at the Secretary's office on the preceding hearing.

Opinion of Chief-Justice Vallarta, in the Suit of "Amparo" put forward by Mrs. Dolores Quesada de Almonte.

I.

The many and very serious constitutional questions to which this case of *amparo* gives rise; the incalculable trans-

cendency which the decision the Court is about to pronounce will exert, not only regarding the cases already decided some time since in conformity with the laws whose enforcement and constitutionality are now denied, but also upon that which is still far more interesting, — with regard to the exercise of the right of self-defense which belongs to the Republic whenever her sovereignty and independence are assailed, give, in my opinion, an importance so exceptional to this case, that it demands from every one of the Magistrates the most attentive consideration and the most conscientious study. Desirous of fulfilling the duties of the office I have the honor to hold, I have endeavored as far as my strength will permit, to study impartially and to resolve accurately the said serious constitutional questions, founding the vote I am about to give upon the principal reasons which have served me in order to form my opinion. I am very far from believing that I have attained the accuracy I have sought for; but if I have been mistaken, let the arguments I now proceed to express testify to the sincerity of my convictions.

II.

The sentence pronounced by the inferior Court, granting the *amparo* asked, is founded exclusively upon the ground that "the law of May 27, 1863, expressly declared that the suspension of individual guarantees and the concession of extraordinary powers in favor of the Executive, should last up to thirty days after the forthcoming reunion of Congress, or before, should the war with France have come to an end; and that as in August, 1867, not only had the French Intervention come to an end but also civil war had ceased, the

Executive lacked authority, constitutional order having then been reëstablished, to order the confiscation of Mr. Juan N. Almonte's property on the 20th. of August of the same year." This argument, which if true, would be unanswerable, is made use of by the counsel of the party asking for *amparo* and supported, as far as historical facts are concerned, by testimonial evidence which he has produced: but the said argument is groundless, and thus leaves the sentence given without a real foundation.

When was constitutional order restored in the Republic after the war of Intervention? When, at which fixed and precise date, did the extraordinary powers granted to the Executive by the law of May 27, 1863, cease? Here is a question which is resolved in the most undeniable manner by official documents and contrary to the assertions contained in the aforesaid sentence.

On the 15th. of July, 1867, the National Government once more established its residence in this Capital.¹ On the 13th. of the following August, the Executive appointed a provisional municipal body to act in this City until the end of the year, at which time the people were to elect the corresponding constitutional City-Council.² On the 1st. of the same month the Government appointed provisionally the Supreme Court of Justice, with authority to act as the Superior Court of the District, until the persons who were to form the same could be constitutionally elected by the people.³ On the 14th. of the same month of August was issued the unfortunate call for elections which caused so many disturbances on the very day of the triumph of the Republic, which not only called

1 Message of President Juarez of the same date. Recopilation of laws, decrees, etc.: edition of 1870, vol. I, page 1.

2 Recopilation of Laws and Decrees already quoted: p. 58.

3 Recopilation of Laws and Decrees already quoted: vol. I, p. 22.

for the election of Federal Officers but also for that of local authorities.¹ On the 28th. of October the Deputies to the Federal Congress were notified to be present at the first preparatory meeting which should take place on the 5th. of November,² and nevertheless Congress did not meet until the 8th. of the following December.³ The official declaration of constitutional President of the Republic and of this Supreme Court was made by Congress on the 19th. of the same month of December,⁴ that of the Magistrates having been delayed until the 4th. of February, 1868,⁵ and therefore this Supreme Court was not installed until the 14th. of the said month.

These historical facts are sufficient to prove that on the 20th. of August, 1867, constitutional order was very far from having been restored in the Republic. On that day there was not a single federal or local, or even municipal authority that had the least right to be called constitutional: at the said time the foreign enemy had scarcely left our shores, and there existed no other powers aside from those that had been created by a state of war, excepting those which the national will had most decidedly sustained in order to defend the independence of the Republic.

Therefore, the argument presented by the counsel of the party referred to, namely: that on the 20th. of August, 1867, constitutional order had been restored in the country, is utterly groundless, erroneous and cannot be sustained.

Article 1st. of the law of May 27, 1863, provided that the extraordinary powers should last "until thirty days after the next meeting of Congress in ordinary session, or before,

1 Recopilation of Laws and Decrees already quoted: vol. I, p. 6.

2 Recopilation of Laws and Decrees already quoted, same vol., p. 220.

3 Parliamentary Records of the 4th. Congress: vol. I, p. 57.

4 Recopilation of Laws and Decrees already quoted: vol. I, pp. 572 and 573.

5 The work above referred to. vol. II, p. 116.

should the war with France have come to an end." When, on what exact date did this term expire? when was the condition referred to by this law fulfilled?

President Juarez in his message upon the opening of the 4th. Constitutional Congress on December 8, 1867, expressed himself as follows: "According to the law of May 27, 1863, the concession of ample powers granted to the Executive was extended until thirty days after the meeting of Congress, or before, if the war with France should have come to an end. The termination of the state of war cannot be declared by Mexico, although in fact no hostilities exist with the said nation. The latter made war upon us without having as yet expressly declared her desire not to continue the same. Thus, according to the said law, the ample powers granted to the Executive should last until thirty days from this date. Nevertheless, I have thought it more proper to declare, as I now do, in this solemn act, that I will make no further use of those powers. . . . It is gratifying to me, citizen deputies, to return to you the deposit of the many ample powers you had confided to me."¹ And the Speaker of the House, commenced his discourse in reply to the above, with the following remarkable words: "The Nation begins once more to-day the constitutional exercise of one of the most precious attributes of sovereignty, that is, the power to legislate through her representatives, thanks to the heroic perseverance of her sons in the glorious struggle she has sustained for five years against foreign invasion, etc." And farther on the same Speaker added: "Congress has heard with pleasure that the Head of the Executive Power returns to their source the ample powers which were granted him by the congressional acts of December 11, 1861, of May 3d., and 27th. of October, 1862

¹ Parliamentary Records of the 4th. Congress, vol. I, p. 56.

and of May 27, 1863, because this fact shows that peace can be maintained with the constitutional powers of the government."¹

These official and solemn declarations suffice, in my opinion, to determine historically and legally, that the 8th. of December, 1867, is the exact date when the ample powers granted to the Executive came to an end. As to the historical question, the documents I have quoted are so decisive, so conclusive, that I cannot imagine how it is possible that any doubt should arise regarding the facts therein related. And as to the legal point in the case, but few remarks will suffice in order to become fully convinced that on the said 8th. day of December, and not before nor afterwards, the ample powers ceased.

It is well known that the National Congress, after closing its sessions on the 31st. of May, 1863, did not meet again until the 8th. of December, 1867. Throughout the whole time the war lasted, the existence of Congress was really impossible, and this notwithstanding the many efforts that were made, first by the Standing Committee at San Luis Potosí,² and afterwards by the Government at Monterey.³ It could not, therefore, be said on the 8th. of December, 1867, that the term fixed by law for the duration of the ample powers had expired, inasmuch as Congress had not acted during the war. According to the said law, those powers might have been extended until January 8, 1868, as was correctly stated by the President in his message.

But was not the condition fixed also by that same law for

1 Parliamentary Records of the 4th. Congress, vol. I, pp. 58 and 60.

2 Decree of October 2, 1863.---"Journal of Debates."---Third Congress, vol. II, p. 57.

3 Decree of October 27, 1863.---Collection of laws, etc., edition of 1867, vol. I, p. 171.

the cessation of those powers fulfilled on the said 8th. day of December? Had not the war with France ended?—Regarding this point nothing better could be said than that which was so modestly set forth in the same Presidential message. France, who made war upon us without having previously declared it, withdrew her troops from Mexico without either having declared that peace was restored.

And the simple withdrawal of the French army did not alter the state of things created by the war. Had the Government of Mexico in view only of the said withdrawal, hastened to proclaim the conclusion of the war, it would not only have placed itself beyond the doctrines of International Law which regulate these serious questions,¹ but it would have sorely wounded the national feeling,—it would have compromised the interests and dignity of the Republic. On the other hand, the cessation of the state of war could not have been declared in the same document in which it was stated that “the Governments (like that of France) have broken their treaties with the Republic and have suspended and still suspend their relations with us”² because the rupture of treaties, caused by war, is wholly contrary to a state of peace, and a consequence of peace is the renewal of those treaties.³

However desirable it may be that a treaty should restore relations between France and Mexico, which relations still remain interrupted in consequence of the war, it is impos-

1 There appear to be three ways by which war may be concluded and peace restored: I. By a *de facto* cessation of hostilities on the part of both belligerents, and a *renewal de facto of the relations of peace*. II. By the unconditional submission of one belligerent to another. III. By the conclusion of a formal treaty of peace. Phillmore. International Law, vol. III, p. 510.

2 Message of President Juarez already quoted. — Parliamentary Records 4th. Congress, vol. I. p. 57.

3 Les conventions, dont la mise en pratique avait etait suspendue pendant la guerre, rentrent en vigueur de plein droit a la conclusion de la paix. Calvo. Le Droit International, vol. II, n° 1306.

sible to find in President Juarez's Message but the declaration of the *statu quo post bellum*, a declaration, furthermore, which cannot be resolved upon by the courts, because its resolution pertains to other powers, as is provided by our fundamental law in reference to affairs of that nature.'

In order to support my arguments upon this point, I will invoke a most important fact. These declarations set forth by the President, were made before the Congress of the Union, and the latter not only accepted them, but it adopted the policy which has been approved by subsequent Congresses, which policy has been vigorously maintained by our Government and may be considered amongst us as time-honored, viz: that which considers as broken all the treaties celebrated by France with Mexico previous to the war. Can it not be perceived, in view of these brief remarks, that there exist an immense distance, an unsurmountable difficulty to be overcome in order to sustain the decision of the inferior court, when the latter declares that in August, 1867, the war with France had ceased? . . .

Hence, I will affirm, as a summary of what I have stated, that neither the period of time fixed by the law of May 27, 1863, nor the conditions provided in the same had expired nor been complied with in August, 1867; and that therefore, the final result of my arguments is that on the said month of August, the ample powers granted to the Executive had not expired, and that, therefore, for these reasons, the *amparo* asked for cannot be granted.

¹ Sections XIV of art. 73, and VIII and X of art. 85 of the Federal Constitution.

III.

A

If I only sought to combat the decision of the inferior court, with what I have already stated my object would have been attained. But upon examining this very serious case, I have wished to do so in all its various phases, and affronting the very transcendental questions to which the said case gives rise, however difficult and arduous they may be. On the other hand, when the same petition for *amparo* is founded upon the grounds that the law of August 16, 1863, was not issued by Congress, the same argument being reiterated in subsequent briefs, and thus it is alleged that the said law is null and void, because it emanated from the ample powers conferred upon the Executive, it becomes indispensable to deal with this question openly, however difficult it may be.

The question to which this case of *amparo* gives rise, may be thus put forth: Were the extraordinary powers with which President Juarez was invested during the time of the war with France, constitutional? Are the laws which the latter issued, in virtue of the said extraordinary powers, valid? The laws of May 27, 1863, and those that preceded the latter and were part and parcel of the same: those of October 27 and May 3d., 1862; of December 11 and June 7, 1861, all those laws, I ask, were they legitimate and valid, or, were they on the contrary, unconstitutional and null? After stating the above, it will be seen that I have affronted the most important issue involved in this case.

When this Supreme Court granted the *amparo* solicited

by Mr. Faustino Goríbar, and the Hon. Magistrate Montes in a discourse, which was truly able and full of learning, discussed this question, I at the time, not so much on account of my natural inclination for the study of all constitutional questions, but in order to comply with the very delicate duties devolving upon me in consequence of the office I then held, devoted all my attention to the point which at that time was decided by the Court. And I must say with all due respect to this High Court and to the talents of the Hon. Magistrate Montes, that the reasons at that time put forth in order to deny the legitimacy of the ample powers, were insufficient to alter the opinion which I have entertained ever since, as Deputy to the Constituent Assembly, I gave my vote in favor of the second part of article 29 of the Constitution. And that same opinion which, as Secretary of Foreign Affairs, I had to sustain in defense of the Republic, is also the one I shall do my best to demonstrate in this serious case, thus complying with my duties as Magistrate of the Supreme Court. And however painful it may be for me to have to combat the writs of execution issued by this Court, my conscience forbids me to accept certain theories which the latter rejects, on account of the respect I entertain towards the said high Tribunal. If anything can serve me as an apology for the arduous and difficult task I now undertake, let it be a feeling of duty which compels me to speak. Leaving aside all other preambles, I will now deal with the case itself.

Those who sustain the theory that *never, at no time, and for no reason whatsoever* shall ample powers be granted to the Executive for the purpose of legislating, do so upon constitutional grounds, founded on article 50 of the Constitution, in that part wherein the latter says: "Never shall two or more of these powers be vested in one single person or corpora-

tion, nor shall the legislative power be confided to any single individual." Those who defend this theory, give to the adverb *never*, a legal significance as absolute as that which it possesses in grammar, and believing it to be a synonyme of "*never, and at no time whatsoever*," subject the precept of the latter part of article 29 of the Constitution, to the interpretation thus unlimited of the above text, affirming that never, at no time, and for no reason whatever, shall the power to legislate in any matter be conferred upon the Executive.

The argument I have just set forth is so forcible, that it suffices to impede any discussion upon the matter, and it likewise prevents the latter from being placed under its proper light. Being convinced of this truth, I desire, even if I have to deviate from the rules, to begin by resolving the said argument, so as to be able afterwards to enter upon the debate and deal with this question in all its bearings.

Is the absolute and strict interpretation attributed to the final part of article 50 by those who defend the theory I combat, acceptable or not? Is it true, be it either in view of real constitutional law or in that of the philosophy of political law, that *never, at no time, in no case, and for no reason whatsoever*, can two or more powers be vested in a single person or corporation, nor the legislative power deposited in the hands of one individual? I do not think so, and in order to sustain my opinion I will at once state that if authority be conferred upon the President of the Republic, for the purpose of legislating in military matters for instance, Congress retaining nevertheless, the supreme legislative power, neither are two powers vested in one person, nor is the legislative power confided to one individual, nor is article 50 of the Constitution thereby infringed. I believe that the said article forbids that in any one of those three powers should be included the other

two or even one of them, in a permanent manner, that is to say, that Congress should suppress the Executive in order to assume the functions of the latter, or that the Court should be declared a legislative power, or that the Executive should obrogate to itself judicial authority. In this manner there would certainly be a reunion of two of the three powers, which is rightfully prohibited by the said article 50. This is the way I interpret the constitutional text referred to.

And I found this interpretation, among other reasons, upon other texts of the same fundamental Code, which are in accordance with the one above mentioned, because I shall never admit that the various precepts contained in the Constitution can be irreconcilable with each other and that they are in open contradiction destroying each other mutually. I will now quote the texts to which I refer. The House of Deputies and the Senate exercise real judicial powers *in certain cases*, when they try high public officers of the Federation, as well as governors of the States, according to articles 103, 104 and 105 of the amended Constitution. Can the said *judicial* powers be denied to the *Legislative Branch* of the Administration, because *never, at no time, in no case, and for no reason whatsoever* can in any corporation be united the Legislative and Judicial Powers? Can article 50 be invoked against articles 103, 104 and 105 of the Constitution? Can the former be interpreted in a manner which the latter reject? Evidently it cannot. Hence, the very texts of the Constitution show us that the adverb *never*, as used in article 50, does not signify what is sustained by the defenders of the theory I now combat.

The President of the Republic is empowered by fraction X of article 85 to "celebrate treaties with foreign powers," which treaties, according to fraction I, letter B of article 72, as amended, shall be submitted to the approbation of the Se-

nate. And as these treaties, according to article 126, are veritable laws, in a final analysis we shall find, according to those texts, that the Legislative Power for the celebration of treaties *is deposited* in the President of the Republic, who, although it is true, shares it with the Senate, it is however excluding the Chamber of Deputies. It is impossible to entertain any doubt regarding this constitutional truth. And, now; can that power to *legislate* be denied the President, because *never, at no time, and in no case whatsoever* can the said authority be vested in one single individual? Can articles 50 and 51 be so interpreted as to destroy, as to annihilate the precepts of the other articles I have just now quoted? I deem this to be utterly untenable.

I might quote other texts which conclusively reject the interpretation of article 50 which I am now refuting. I might enumerate certain powers of Congress which are not strictly legislative but judicial, such as are conferred upon it by the latter part, fraction XXVIII, of article 72; or administrative, as are those conferred upon the same body by fractions XII and XXIX of the said article; I might refer to the fact that for slight offences, for certain faults, the political or administrative authority may impose corrective penalties, according to article 21, in order to show how it is that in these cases and on certain occasions, according to the constitutional texts themselves, the reunion of two powers in one person or corporation is licit and legal; in order to prove that the rule established by article 50 is not so absolute or inflexible that it admits of no exceptions. But I do not think it proper to trespass upon the respectable attention of this Court by going into an extensive analysis of all the texts which may favor my arguments. Those I have already quoted suffice in order to consider myself justified in concluding that the accord of the

precepts themselves of the Constitution compel us to acknowledge that the adverb *never*, of article 50, is not, legally speaking, a synonyme of *at no time*, or *on no occasion*: that the said article does not contain a rule so general and absolute as to consider each one the exceptions contained in other articles of the same Code a violation of the latter.

And if in view of positive law we have found so many exceptions to the said rule, in view of the philosophy of political right it can not be sustained that the same is as inflexible as it is sought to make it appear. I might appeal to more than one very respectable authority in order to show that the said division of powers into the Legislative, the Executive and the Judiciary, although universally accepted by all enlightened peoples, is not traced out so mathematically as to enable one to perceive at a glance and with precision the limits of each one of those powers: and also in order to show that the same powerful reasons which tended to create that division, demand at times that one of the powers shall exercise the functions which properly belong to another. But I abstain from doing this, because before this Court no authority is superior to the Constitutional text, and it would therefore be superfluous to quote the jurists who establish exceptions upon the principle of the attributes of each power, inasmuch as the said texts refer to those exceptions in the most explicit manner.

I believe I have removed an obstacle which prevented me from placing the question of extraordinary powers in its proper light, because I think I have given a correct explanation of the argument which in the name of the Constitution has attacked the theory which I am about to defend as necessary in cases like that to which the suit of *amparo* we are now discussing has given rise.

Having shown that article 50 does not, in an absolute manner and without any exception whatever, prohibit one of the powers from exercising the authority which properly belongs to another, I am now in a position to show the constitutionality of the said theory in the most direct manner.

B

Article 29 of the Constitution says: "In cases of invasion, grave disturbance of the public peace, or whatever cause which may put society in great peril or conflict, only the President of the Republic in concurrence with the Council of Ministers, and with the approbation of the Congress of the Union, and in the recess of the latter, of the permanent deputation, may suspend the guarantees established by this Constitution, with the exception of those that assure the life of man; but such suspension shall be only for a limited time, by means of general provisions, and of such a character as not to favor a determined individual purpose.

"If the suspension take place during the session of Congress, this shall grant such authorization as they shall deem necessary to enable the Executive to confront the situation. If it shall take place during recess, the permanent deputation shall, without delay, convoke the Congress for its advice and action." In this explicit and conclusive text is founded the constitutionality of the concession of extraordinary powers, as I now will proceed to show.

The article above quoted is composed of two parts which are entirely different the one from the other, inspired by distinct views, the results of distinct wants, and which were even discussed and approved at different periods. The first

part only refers to the suspension of the guarantees granted by the Constitution, and provides in what cases, how and by whom the said suspension may be decreed; but the second part alludes to another very different matter: it empowers Congress "*to grant the authorization this body may deem necessary to enable the Executive to face a difficult situation.*" However much it may have been sought to confound the suspension of guarantees and the concession of ample powers to the Executive, a confusion which has served to combat the constitutionality of the extraordinary faculties, by alleging that according to article 29 only the individual guarantees are suspended and not the social guarantees which are perpetual, it is an incontrovertible truth that these are matters entirely distinct the one from the other, and that whatever may be said regarding the one is not applicable to the other.

The attentive perusal of article 29 suffices to convince us of this truth. The suspension of guarantees cannot be decreed without "the concurrence of the council of ministers," and for the concession of powers to the Executive, this requisite is not necessary. The suspension of guarantees may be approved, during the recess of Congress, by the permanent deputation or standing Committee of that body; whilst the latter can at no time grant ample powers to the Executive, because if they should become necessary during recess, "the standing committee shall, without delay, convoke Congress for its advice and action." It were useless to say more in order to see very clearly that article 29 contains two precepts which are entirely different the one from the other: one of those precepts refers to the suspension of guarantees and the other to the concession of powers or authorization to the Executive so as to enable the latter to confront difficult and exceptional circumstances.

This being the case, I entertain no doubt whatever that in the latter part of article 29, already mentioned, is fully founded the legitimacy of the extraordinary powers which Congress may confer upon the Executive, and I am the more thoroughly convinced of this, inasmuch as if the said text is not to be thus interpreted, it would remain as a useless clause of the Constitution, and without any possible application. If the following phrase, viz: "Congress shall grant the authorization which it may deem necessary so as to enable the Executive to face the situation," in cases of invasion, serious disturbance of the public peace, etc., does not signify the legitimacy of the extraordinary powers, in that case either our language has lost all value in the said constitutional precept or the latter must be disobeyed in an arbitrary and whimsical manner. To hold that the said phrase refers solely to the suspension of individual guarantees, appears to me to be wholly unfounded.

What is asserted by the defenders of the theory I combat is therefore, by no means correct, that is, that there is no express text in the Constitution authorizing the extraordinary faculties, and that as the one which prohibits the Executive from legislating exists (article 50), the said faculties are unconstitutional. The said express text exists in the second part of article 29, and article 50 does not contain the meaning that is sought to be given to it. Because the latter is not in contradiction with articles 103, 104 and 105, which empower Congress to try public officers for certain offences: nor with articles 85, fraction X, 72, letter B, fraction I, which empower the President to conclude treaties with the approbation of the Senate: nor with article 21 which empowers the administrative authorities to try certain offenders and impose correctional penalties, etc., and it is neither in contradiction

with, nor does it destroy the said precept of article 29. It is my opinion that this interpretation, this accord between the constitutional texts is per force to be accepted.

But rather than enter into abstract dissertations upon the subject, it is better to confine ourselves to the discussion of the case in question, applying to the same the theories which form the object of this debate. The law of May 27th., 1863, and those relating to the same which granted such ample faculties to the Executive as far as to authorize the latter not only to legislate, but even to conclude diplomatic treaties, with the sole restriction of not admitting any kind of intervention, and all this for such an indefinite period as were uncertain and indefinite the hazards of the foreign war, those laws whose constitutionality is now questioned, can they be sustained in view of our fundamental Code? can they be included within the precept of article 29? These are the questions which ought to be solved in the course of the present case.

When the said law of May was passed, Puebla had succumbed and the French army triumphant and the traitors full of insolence were approaching the very gates of the capital. In vain did patriotism try to defend it; an inexorable necessity required its evacuation, and it fell into the hands of the enemy during the early part of June. The constitutional Government then commenced the peregrination which carried it as far as Paso del Norte, which fact made the enemies of Mexico believe that the ruin of the Republic had been consummated.

When Congress held their last sessions during that unfortunate month of May, the situation was such, that only with the confidence of the purest patriotism could one hope for the salvation not only of constitutional order, but of the

very independence itself. Congress foresaw, and subsequent events fully justified their foresight, that the hazards of war, that the immense misfortunes which afflicted our country, would perhaps prevent that body from meeting again for some time to come, and then, acting nobly and courageously in view of that terrible situation, and not wishing that for the lack of a Congress the national sovereignty should remain without its representative, at the very time when it most needed it for its defense, the said body authorized President Juarez to legislate, to enter into treaties, to dictate all the measures which might be deemed convenient for the salvation of the national independence, and all this until Congress should meet again or until the war with France should have come to an end.

I shall not ask public and patriotic sentiment whether Congress was right or not in delegating these powers to the Executive, when it foresaw that its existence was impossible under certain peculiar circumstances, and when it delegates the same precisely with the object of saving constitutional order and independence together with the representation of the national sovereignty. If during a given war Congress cannot exist, and if in order to carry on the former successfully it becomes necessary to legislate, the feelings of patriotism inherent in all men cannot but applaud and approve that the President of the Republic, the Commander of the Army or whomsoever may be charged with the defense of the independence of the country should legislate when necessary. . . .

But the question we are now discussing is constitutional and therefore it must be solved constitutionally, leaving aside whatever patriotic feelings may suggest. Was the third Congress right, did it act in conformity with the Constitution, upon passing the law of May 27, 1863, by which the Presi-

dent was as fully empowered as we have seen? Yes; undoubtedly, is my answer, fully and profoundly convinced as I am, because the text of article 29, so frequently quoted, authorizes Congress to grant *all the powers that may be deemed necessary so as to enable the Executive to face the situation*; and as the third Congress apprehended, and with full reason, that during the war their functions might become impossible, they deemed it necessary, also with good reason, to authorize the President to legislate, to conclude treaties, because only thus could he face the very serious circumstances under which the country was placed owing to foreign intervention.

The arguments taken from the *perpetuity of social guarantees*, of their non-suspension, I may say, by the by, have a very eloquent reply in the history of the said invasion. The French army came not only *suspending the social guarantees*, such as the division of public powers, the authority of Congress, etc., etc., but even denying the whole Constitution, attacking our independence and conquering Mexico in order to establish an empire for a foreign prince! And in order to vindicate the said social guarantees, which were not only suspended but even denied and utterly ignored, could not President Juarez ever levy taxes with which to carry on the war? could he never decree any penalties for the punishment of the renegades? could he not exercise those powers of war, which International Law grants to all those nations which are as infamously invaded as was Mexico at that time? Let us reflect upon the seriousness of the consequences which would result from the enforcement of such a theory; let us reflect upon the many dangers which the same would create for the future of Mexico!

My convictions are so profound upon this point, as to lead me to believe that if the said precept of article 29 did not

exist, or, what amounts to the same thing, if it is to be interpreted in the sense I have been combatting, the Constitution would contain a gap which alone would endanger not only the whole Constitution but the very existence of the Republic. What are we to do in order to carry on a foreign war, if the President can never legislate, even when Congress does not exist? Who is to decree the taxes the war demands? The abyss thus opened, if such a gap existed in the Constitution, would be immense, fathomless. . . . I only allow myself to refer to it, as the fatal term to which we would be necessarily conveyed by the theory I combat.

After giving the above reasons, I may conclude by asserting that the faculty of legislating was included in the extraordinary powers granted to the President in 1863; that the authorizations granted to the Government at the said period were sufficiently ample to empower the same to conclude treaties; that the said authorizations were constitutional, and that the acts executed by virtue of the said powers are legitimate and valid.



In my endeavor to found my vote, I desire to present at least the principal reasons I have for forming my opinion. The history of article 29 in the Constituent Congress is really interesting, and it throws so much light upon the truths I have sought to demonstrate, that only by closing one's eyes can any one fail to perceive them. I therefore deem it indispensable to refer to the historical origin of the said article, in order that the facts which cannot be doubted may reveal to us the significance which it has in reality,—that which was given to it by the Congress that approved the same.

That which is to-day the second part of article 29, was presented as article n° 34 in the session of August 23d., 1856, and the Committee withdrew it with the consent of Congress.¹ Having again been presented without any alteration in the session of the 21st. of the following November, it was fully discussed, and then those who sustained that the constitutional faculties of the Government were sufficient in all cases to confront any circumstances whatever and who were ably represented by Mr. Zarco, combatted the said article most vigourously, because they thought it inclosed the danger of a dictatorship, a dictatorship which for certain extreme cases was defended during the course of the debate by such illustrious republicans as Ocampo and Arriaga.²

A vote having been taken, the said article was approved, with an amendment proposed by Mr. Ocampo to the effect that the word "individual" should be placed before the word "guarantees,"³ by sixty-eight votes against twelve in the session of November 22.⁴

1 Zarco, «History of the Constituent Congress,» vol. II, p. 231.

2 The words to which I refer, uttered by Messrs. Ocampo and Arriaga in reply to the arguments set forth by Mr. Zarco, are the following: «Mr. Ocampo, in reply to Mr. Ruiz, said, . . . the representation of Congress is as legitimate as that of the State Legislatures and as that of the Gouvernement *when the latter is invested with extraordinary powers.*»

This same gentleman afterwards said, employing a medical simile: «that the normal condition of man is when he enjoys perfect health, that the law is the hygienic treatment, the cases of public disturbance are the diseases, and the *dictatorship* the remedy.» Mr. Arriaga said, «that respecting the cases of conspirators it is necessary that besides the powers of the law there be an *extraordinary power* capable of preserving and saving social order.» And further on he added: «This article (the one under discussion, which forms now the first part of article 29), is a social necessity, but it is likewise a serious peril, and for this reason the deputies who may wish to establish in the same certain prudent restrictions should hasten to offer them in the form of amendments.» In conclusion he said: that «in order to cure public infirmities or maladies, the *homeopathic* system should be adopted to a certain extent.» Zarco's «History of the Constituent Congress:» vol. II, pp. 563, 568 and 569.

3 The work and volume already quoted, p. 569.

4 The work and volume already quoted, p. 579.

Before proceeding any further it is well to make the following remark. Of the opposite opinions which were defended during the course of the debate, which are those that were approved by Congress in the final and definite vote above referred to? Those that were defended by Mr. Zarco, who combatted the dictatorship in any form, that which arises from a revolution as well as the one established by constitutional precepts, or the opinions sustained by Messrs. Ocampo and Arriaga who acknowledge the necessity of constitutional dictatorships? Those who were opposed to the said article only had twelve votes, whilst the defenders of the same were supported by sixty-eight votes.

Unanswerable as is this numerical result, the following truth is likewise conclusive when thoroughly investigated. Those who quote Mr. Zarco's words as the expression of opinion of the majority of the House, do not properly interpret, nor do they understand the spirit and significance of the said discussion in Congress. The said words of Mr. Zarco were so far from expressing the opinion of the House, that his own private views upon the subject were rejected by the majority of the same. With this simple remark, the many arguments offered against the extraordinary powers, by quoting the words uttered by the deputies who opposed the said powers, words and opinions which Congress rejected, become completely destroyed. The discourse of a deputy can only be quoted as a proof of the opinion which prevails in Congress when at least the majority of the members of the latter accept and sanction the opinions set forth in the said discourse.

Having stated the above, I will now proceed with the history of article 29. The approbation of the first part of the said article, that which refers to the suspension of individual guarantees, did not satisfy the majority of Congress. The latter,

knowing that the revolutionary element rises without having to contend with any legal obstacle, and fights hand to hand with the Government who is subject to constitutional restrictions, and not wishing that in that unequal contest the Constitution should perish, (Congress were then beginning to feel the powerful efforts made by the Church party with the object of destroying the fundamental Code), they sought for an efficacious remedy for so grave a peril, convinced as they were that the suspension of the guarantees alone would not strengthen the Government as much as it was to be desired in certain dangerous crises. Prompted by this idea, Mr. Olvera presented to Congress on the 9th. of December, as an addition to article 30, a bill in reference to dictatorship; and although the latter was by no means a satisfactory bill, it was nevertheless referred to the Committee on Constitution. The latter did not accept the bill such as its author had presented it, but they accepted the idea which gave rise to the same; the Committee acknowledged the fact that during a formidable civil war, as that which then threatened the liberal party, that during a foreign invasion when Congress might be unable to act, the laws, the institutions, the sovereignty and independence of the Republic should not be allowed to succumb for the want of the necessary strength, power and authorization vested in the Executive, so as to enable the latter to face any difficult circumstances; and the same Committee then submitted to Congress as an addition or amendment to article 34, which is now article 29, that which literally appears at present in the second part of the latter article.

In the session of the 24th. of February 1857 the said amendment was passed by a vote of fifty-two yeas against twenty-eight noes.¹ It is to be regretted that owing to the

1 Zarco's «History of the Constituent Congress,» vol. II, p. 640.

want of time there should have been no discussion upon this point; but the official and authentic documents which are extant suffice to prove that the bill on dictatorship offered by Mr. Olvera was the real origin of the said amendment; that the serious considerations to which I have just referred were those that induced Congress to believe that neither the ordinary powers of the Executive nor the suspension of guarantees were sufficient in certain cases to control difficult circumstances, but that other authorizations might become necessary, as many of those authorizations conferred upon the Government as Congress might deem convenient in order to overcome the said difficulties. With this view, with this intention, did the fifty-two deputies who composed the majority of the House approve the said amendment.¹

I know very well that the enemies of the ample powers

¹ The journal of the said session in the part which refers to the above, contains the following: «Session of the 24th. of January 1857. . . . An addition to article 34 which was offered by the same Committee, was also placed before the House.» The said addition or amendment is as follows: «If the suspension should take place during the session of Congress, the latter shall grant the authorizations which may be deemed necessary so as to enable the Executive to face the situation. Should the suspension take place during recess, the standing committee shall convoke Congress without delay for their advice and action.»

The above was put to a vote without discussion and passed by the fifty-two votes of the following gentlemen: Aguado, Anaya, Hermosillo, Aranda Albino, Arias, Arriaga, Arriola, Auza, Banuet, Baranda, Buenrostro Manuel, Castellano Matías, Castillo Velasco, Cerqueda, Cortés Esperza, Degollado Santos, Echaiz, Emparán, Estrada Julian, Fernandez Alfaro, Gamboa, García Anaya, Garza Melo, Guerrero, Guzman, Ibarra Francisco, Ibarra Juan N., Iniestra, Iturbide, Langlois, Lazo Estrada, López de Nava, Mariscal, Mata Montañez, Morales, Moreno, Ochoa Santos, Olvera, Payró, Ramirez Mariano, Ramirez Mateo, Reyes Robles, Rojas Jesus, Romero Félix, Rosas, Sanchez José Mariano, Torres Aranda, Vallarta, Vargas, Vega and Villagran; against the twenty-eight votes of the following gentlemen: Alcaraz, Barrera Eulogio, Contreras Elizalde, Degollado Joaquin, Del Rio, Diaz Barriga, Escudero Antonio, García de Arellano, García Granados, Gómez Farías Benito, Gonzalez Paez, Goytia, Irigoyen, Larrazábal, Lémus, Llano, Muñoz José Eligio, Ortega, Peña y Barragan, Peña y Ramirez, Prieto, Quijano, Ramirez Ignacio, Revilla, Sierra Ignacio, Villalobos, Zarco and Zavala.»

come to the conclusion from the fact that the Committee on Constitution did not accept Mr. Olvera's bill, that Congress rejected the idea of delegating the Legislative Power; but is this a logical conclusion? It is true that the triumvirate suggested by Mr. Olvera was not accepted: but are we to infer from this that Congress did not approve the idea of conferring upon the Executive all the authorizations which might be deemed necessary in order to face the situation? Historical truths protest against such a conclusion, so that it becomes unnecessary to have the same condemned by the wellknown rules of logic. And to allege now that in the said constitutional precept the idea of delegating the legislative power was rejected, and that an express text authorizing such a delegation does not exist, etc., etc., is as much as to accuse the constituent deputies of not understanding their native language, and that they ignored, upon approving the following literal text: ". . . the latter shall grant all the authorizations they may deem necessary so as to enable the Executive to face the situation," they did not approve of the idea that the President might even legislate whenever this authorization should be deemed necessary owing to the seriousness of the dangers which, in the opinion of Congress, could not be otherwise confronted. Far from deserving these reproaches, the two most remarkable events of our modern history,—the war of Reform and the French war,—fully justify the foresight of the constituent deputies. Allow me to say this, notwithstanding the fact that I was one of the deputies who voted in favor of the second part of article 29, approving the natural signification it contains, that is, with the understanding that the President might be authorized to issue laws, whenever it should be so required by the welfare and safety of the Republic.

The historical study I have just made, clearly proves the following truth: the constituent Congress thought that besides the suspension of guarantees, it might become necessary under certain exceptional circumstances to confer upon the Government some extraordinary powers in order to prevent that the Constitution itself should be nothing but a mere sheet of paper that might be torn with the utmost impunity by the first bold and daring revolutionist who might present himself, and therefore the said Congress sanctioned expressly and in the most conclusive manner the theory of the extraordinary powers, authorizing Congress to grant those which might be deemed necessary so as to enable the Executive to face the situation, in view of the extent and seriousness of the dangers that threaten the country and her institutions. In order to ignore this historical truth it were necessary even to ignore the contents of the journal of the session of January 24th., 1857; it were necessary to deny the value and meaning of the words referred to or to erase from our fundamental Code the second part of article 29.

D

I have a profound respect for the opinions of others, particularly when they are entertained and supported by persons whose talent and learning are notorious and whose sincerity cannot be doubted. And when my conscience prompts me to differ from those opinions, I deem it a duty to reply at least to the principal arguments that support the same. Those who object to the delegation of the Legislative Power in the President, present as a precedent which ought to be adhered to by all subsequent congresses, the conduct which was ob-

served by the first constitutional Congress, and they allege that the latter were apposed to the said delegation and offer other arguments in support of their opinions. I must in my reply take this point into consideration.

President Comonfort, who was never a friend of the Constitution, and who was wont to govern without any restrictions whatever, considered the constitutional restrictions placed in the way of the Executive as an attack upon that which he called "the principle of authority," and this he sustained prompted by the prejudiced idea that it was impossible to govern with the Constitution, and hence he asked of the first Congress, on October 10th., 1857, to declare that "the President of the Republic should have *discretional powers* in all that refers to the guarantees granted by the Constitution," and furthermore "that through the delegation of Congress the Executive should be fully authorized *to arrange and regulate the finances of the Federation* and to dispose of the State forces and to organize those which he might deem necessary." To ask for this was to ask for the unlimited dictatorship with which the said imprudent President appeared to be so well satisfied; that dictatorship which was created by article 3 of the Plan of Ayutla. To solicit such an authorization was not to ask for such authorizations as were necessary in order to face a situation more or less dangerous, but it was asking the suppression of the Constitution, an utter disregard for the fundamental Code. Discretional powers in matters pertaining to individual guarantees! The mere fact of desiring such a thing, proved that there was no *will* to understand the Constitution. Powers to arrange and regulate the finances of the Federation! The mere fact of expressing such an idea, showed plainly that there was no desire to act consti-

1 History of the first Constitutional Congress, p. 88.

tutionally, because the authorizations which can be granted to the Executive shall only serve the President so as to enable him to face a difficult and exceptional situation, but not to regulate, as can only be done in times of peace and order, the national finances. Therefore, there was a most flagrant contradiction between the said petition and the letter and spirit of the second part of article 29.

Congress granted nothing of this, and they did well, because what was asked of that body could not, and should not be granted. Thus Congress placed themselves in a ground strictly constitutional, and suspended not all but only some of the individual guarantees, and conferred upon the President *the authorizations that the said body deemed necessary so as to enable the Executive to face the situation.*¹ Did the said authorizations fill their object? Or, did Congress, distrusting the loyalty of the President, refuse to grant the latter all those that could have been granted? These are questions which refer to political opinions, and their discussion here would be out of place.

But it is important to ascertain whether the said Congress did not wish to grant, or whether they actually refused to grant, the authorizations which empowered the Executive to legislate. After having suspended certain guarantees, the first law of November 6, 1857, provided the following: "The Executive shall issue the *regulations and orders* relative to the said suspension whenever the same is to be made effective." And the Executive, at the end of the same law, published the following which he termed *a provision*: "The freedom of the press remains for the present subject to the law of December 28, 1855." Before proceeding any farther, I beg to ask: to declare in force a law which has been repeal

1 Law of November 6, 1857. Dublin's collection, vol. VII, pp. 625 and 626,

ed, is this not legislating? If Congress had not wished that the President should legislate, upon suspending the guarantee contained in article 7th. of the Constitution, they should have declared which of the many laws repealed respecting the press was to remain in force during the said suspension. But they did not do this, and they empowered the President to legislate, because the reënfacement of a law previously repealed is to legislate, even though the said measure be termed a regulation, an order or a provision.

If the other *provisions* be analyzed with the same care, it will be seen at once that every one of them contains some legislative act, and that too of the most serious nature. To hold that in the regulations of a law serious penalties may be decreed, such as solitary confinement in prison, exile, etc., is to be incapable of distinguishing the difference there is between a regulation of any kind and a penal law.

Had the first Congress been of opinion that the legislative power could not be delegated, would they have allowed President Comonfort to issue those regulations of the law of November 6th? If Congress had entertained such an opinion, it is certain that the said body would have issued the exceptional laws which were to remain in force provisionally during the suspension of the guarantees. But that body did not do this, and they delegated to the President the power of legislating upon certain matters.

But, furthermore, in the other law, also of November 6th., Congress authorized the Executive to obtain up to six millions of dollars, giving as a guaranty for the payment of the said sum the part of the revenues which was unburdened, "and also to dictate such measures as might be deemed necessary in order to regulate the receipt of the said revenues, without, however, being empowered to rent out the same."

And I again ask, in order to do this, are regulations, orders and provisions sufficient? Who can ignore that in order to regulate the collection of taxes it becomes necessary to legislate, and to legislate upon a difficult subject? Who is there that imagines that in order to regulate the floating debt it is unnecessary to pass certain laws which shall determine the acknowledgment, liquidation and payment of the said debt? When Congress thus authorized the President, could it have been with the understanding that those powers might be made use of without legislating?

What has been stated is sufficient: it is clear that the first Congress allowed the Executive to legislate: furthermore, that in the very nature of the authorizations which were conferred upon him there was included beyond any doubt whatever the power to legislate upon certain matters. In view of all this, I think that the assertion to the effect that the first Congress interpreted article 29 in the sense that the legislative power cannot be delegated, is wholly incorrect.

There is still another remark to be made: even supposing that the said Congress did not intend to confer such a delegation, would this be sufficient in order to refer to that body as a model and to censure all other Congresses who should do anything to the contrary? Can the application which, under certain given circumstances, is attributed by any Congress to article 29, be considered as a rule for the interpretation of the Constitution? In order to sustain this it were necessary that all the difficult situations, that all the political crises should be of the same identical seriousness. For this it were necessary that the situation of the country in November, 1857, when the reactionary party founded all their principal hopes in the hesitation of the President and in his antipathy to the Constitution, had been the same as the

one in which the country found itself in June, 1863, when the capital was occupied by a foreign army, the Congress of the Union dissolved, the President a fugitive, and when the danger which threatened the Republic had reached its highest point. To hold that because in 1857 Congress did not consider it necessary that the President should legislate, which is untrue as I have shown, the Congress of 1863 could not and should not believe in such a necessity, is so unreasonable that it cannot be sustained.

But since in the task I have undertaken I have been obliged to refer to the history of the first Congress in 1857, in order to examine impartially what the said body did, it is well to go somewhat farther and see what happened afterwards. Influenced by the prejudices which animated him, President Comonfort finally rebelled against the Constitution. The fatal *coup d'Etat* of December 17, 1857, ignored and disavowed the existence of the fundamental Code. The instigators of a military mob thought they might become masters of the destinies of Mexico, although our history has plainly taught us, by means of the most eloquent examples, that public power cannot be thus attained.

When everything appeared to have come to an end, President Juarez announced to the whole Nation, from Veracruz that the constitutional Government still existed. But that government in the said port was destitute of everything, it did not even have a Congress of whom it might ask for the necessary authorizations with which to face the situation. What did the Government do then? Did it per chance allow the Constitutional cause to perish because it could not issue a single law, because there was no one who could legislate? Instead of doing this, the said Government issued on the 7th. of April, 1858, the following decree which was authorized

by the illustrious Ocampo: "The Commander-in-Chief of the Federal Army is hereby fully authorized and invested with ample powers in all that pertains to the finance and war departments, to dictate all those measures which may be deemed necessary in order to reëstablish the democratic institutions in the country." Invested with those powers which were frequently used for the purpose of legislating, Mr. Degollado, the hero of the war of Reform, went to the interior and improvised armies, and through the force of perseverance he at last compelled victory to abandon the fortunes of Miramon.

Meantime, President Juarez in Veracruz not only legislated upon everything the war and the situation required, but to every triumph achieved by the reactionary party he responded with one of those laws which through *antonomasia* are called of Reform.

Well then, is there any one who pretends to consider as constitutional infractions all the acts of the Government and of the Military Commanders to whose efforts and to the use of the extraordinary powers was due the restoration of the Constitution? Would the Supreme Court grant *amparo* against all the acts which emanated from those laws of Reform? would they declare null and void the sales which were made of the property of the Clergy, as well as the civil marriages, etc., etc., simply because those laws which were issued by virtue of extraordinary powers are null, because according to article 50 of the Constitution the President can never and at no time legislate? . . . As regards myself, I can assure you that I shall never hold anything of the kind, because I think that the Constitution in certain cases legalizes the said powers.

We must conclude from the above that the historical pre-

cedents, that the acts which then occurred, after the Constitution began to take effect, condemn the theory which I am combatting.

E

In their endeavor to prove that the Executive Power can never exercise legislative faculties, the defenders of the latter opinion bring in support of the same the political institutions and the history of other peoples, including those of ancient times. I shall not even refer to Rome, the former Mistress of the world, and this for one sole reason: because the historical and juridical study of the Roman dictatorship would bring us to no practical conclusions in the constitutional question we are now discussing, inasmuch as there is an immense difference between the political conditions of modern society and that of the Roman Republic. But this same reason induces me to pause and examine briefly what is passing in the United States of the North. When it has been asserted that not even during the gigantic war of 1861 to 1865 did the President of the said Republic legislate for a single day; when we are told that although it is true that we have copied the American Constitution, we have only its letter but not its spirit, because we lack the education and virtues possessed by that great people, there exists reason enough for us to examine the history and the Constitution of the said country, in order to ascertain to which of the two systems here discussed do the American institutions give their respectable support.

That the Executive Power should exercise no extraordinary faculties in normal times, is so clear and natural a fact that no one disputes it. Therefore, in order to ascertain how

the Americans understand their Constitution regarding the point in question, we must fix our attention not upon the long periods of peace which the great Republic has enjoyed, but upon the occasions when she has suffered the calamities of war. Let us commence with her war for independence.

The campaign of 1776 had been quite unfavorable for the American cause. Washington, taught by experience, addressed Congress a memorable document in which he stated that if new vigor and strength were not imparted to the military system in order to prosecute the campaign, all hope of success should be abandoned. To the said statements of that illustrious man, Congress responded with a decree appointing him in reality a military dictator, and granting him, "full, ample and complete powers" to organize the army, to appoint officers even of the rank of Brigadier Generals, to fix their pay, to call out the Militia of the States, to arrest and imprison all parties who should oppose the American cause, etc., etc. That which according to the laws and practices of the United States no body could do except Congress, Washington, by virtue of the said decree, was authorized to do during a period of six months.¹ This precedent, which may properly be called classical, is the first presented to us by the History of the United States.

And it is not the only one that occurred during the said period. One of the State Legislatures also granted extraordinary powers to the Governor, so as to enable the latter to confront the difficulties of the war. "Governor Rutledge," says the historian Spencer, alluding to the events of the war of 1780, "was invested with dictatorial powers and authorized to do all that was necessary for the public welfare, except to deprive any citizen of his life without trial. The Assembly,

¹ Spencer's "History of the United States," vol. I, pp. 455 and 456.

after delegating to the Governor this power, which was to last up to ten days after their next reunion, adjourned."¹

Let us now devote our attention to another epoch: to that of the war with England in 1812. Who ignores what General Jackson thought necessary to do, and what he really did, for the defense of New Orleans in 1814? He proclaimed martial law, but with such severity that perhaps he may not be forgiven for it by the history of a free people,² and notwithstanding this, the Government and the Congress of the Union, in spite of the eloquence of Henry Clay, approved the conduct of the said General, several years after the war had taken place, that is, in 1819.³

But the period of the history which we are now consulting that affords more illustrations of the point I am endeavoring to clear up, is that of the War of Secession. There are so many acts of the said period which prove that President Lincoln made use of extra-constitutional powers, so many of his acts and proclamations which show that he even legislated upon certain matters which the Federal Congress themselves were forbidden to touch, that it were perhaps too tedious and too lengthy to quote them all.

From the beginning of the war, the said President authorized General Scott to suspend the *habeas corpus*, an authorization which was not only carried out, but was defended before Congress by the President himself with the following remarkable words: "The Constitution provides that the *habeas corpus* shall not be suspended excepting when, in cases of invasion or rebellion, public safety should so require it. . . . The Constitution does not provide who is to decree the said

1 Spencer's «History of the United States,» vol. II, p. 71.

2 The same work, vol. III, p. 280.

3 Spencer's «History of the United States,» vol. III, p. 219.

suspension, and as the said provision was clearly intended for a dangerous situation, it cannot be supposed that the authors of the Constitution desired the peril to increase until Congress might be able to meet, especially when the efforts of the rebellion tend to prevent the said meeting.”¹ Among the various legislative acts, which properly pertain to Congress, and which could be quoted as having been performed by President Lincoln, those that mostly call our attention on account of their notorious seriousness, are his proclamations of the 19th. and 27th. of April, 1861, which declared the state of war, and established the blockade in the ports of the Southern States,² when, according to the Constitution, Congress only has the power “to declare war, to issue letters of marque and to establish regulations for the capture of prizes or spoils in land and sea.”³ Congress, far from disapproving these acts as unconstitutional, rendered the same valid, resolving on August 6 of the same year that “all the acts, proclamations, and orders of the President of the United States after the 4th. of March, 1861, respecting the Army and Navy of the United States and the calling out of the States’ Militia, are hereby in all respects approved and legalized and re-validated with the same effect as if they had been ordered and executed under the previous and express authority and direction of the Congress of the United States.”⁴ The said Congress did then, what no Mexican Congress has ever done: that is to say, they granted to the President of the Republic legislative powers with a retroactive effect.⁵ •

1 President Lincoln’s «Message to Congress, July, 1861.

2 United States Statutes at large, vol. XII, pp. 1259 and 1260.

3 Article I, Section 8th. of the United States Federal Constitution.

4 United States Statutes at large, vol. XII, p. 326.

5 In 1863 the validity of the blockade decreed in the proclamations of the 19th. and 27th. of April, 1861, was discussed at length in the Supreme Court, and Mr. Nelson, Magistrate of the said Tribunal, said, with regard to this

I shall not relate all what President Lincoln did afterwards, exercising the powers of war in an extra-constitutional manner, at times taking possession of the telegraphic messages in the telegraph-offices, "in order to discover who were the sympathizers of the Confederates,"¹ at others destroying the liberty of the press,² or suspending the *habeas corpus*, and ordering arrests without the constitutional requisites, &c.³ I shall only call attention to the following fact: Congress, in December, 1862, approved once more all what had previously been done; they sanctioned the conduct of the President and conferred upon him *full authority* to suspend the *habeas corpus* whenever in his opinion public safety should so require it.⁴ Is anything more needed? Then there exists another Act of Congress which ratifies and legalizes the previous extra-constitutional acts of the President; viz: the Act of the 2d. of March, 1867, which not only confirmed but also provided that no Court of the United States should be able to take cognizance of the matters resolved upon by virtue of the said acts of the President.⁵

point: "Congress on the 6th. of August, 1862, passed an Act confirming all acts, proclamations and orders of the President after the 4th. of March, 1861, respecting the army and navy, and legalizing them, so far as was competent for that body, and it has been suggested, but scarcely argued, that this legislation on the subject had the effect to bring into existence an *ex post facto* civil war with all the rights of capture and confiscation *jure belli*, from the date referred to. . . . The instance of the seizure of the Dutch ships in 1803 by Great Britain before the war, and confiscation after the declaration of war which is well known, is referred to as an authority. But there the ships were seized by the war power, through orders of the government, the seizure being a partial exercise of that power, and which was soon after exercised in full.

The precedent is one which has not received the approbation of jurists and is not to be followed. See W. B. Lawrence, 2d. edition, Wheaton's elements of Int. Law, p. 4, ch. 1, sec. 11 and note. But admitting its full weight, it affords no authority in the present case." Whiting, War-Powers under Constitution, 43d. ed. p. 155.

1 Spencer's «History of the United States, vol. IV, p. 31 and note.

2 Spencer's «History of the United States, vol. IV, p. 94.

3 Work quoted.

4 Spencer's «History of the United States, vol. IV, p. 231.

5 United States Statutes at large, vol. XIV, p. 462.

If all this is not sufficient to show how Lincoln exercised legislative authority, with and without the previous authorization of Congress, I will quote some of his acts, his legislation, I may term it, relative to slavery. After the many and prolonged hesitations upon this point, on the 1st. of January, 1863, he issued his famous "Emancipation Proclamation" declaring all the slaves of the Confederate States free forever.¹ In support of this act of such transcendental importance, an act which does honor to the civilization of the present century, Lincoln does not appeal to the Constitution, but to the justice of emancipation, to the military necessity which the Constitution recognizes, and also to the impartial judgment of the human race.

But constitutionally speaking, and laying aside all philosophical and humanitarian considerations which ennoble Lincoln's conduct, that act was not only legislating but it was legislating upon a matter which even the Federal Congress was forbidden to touch. And this is so true that at the beginning of the war, the Government had offered to respect slavery, as a private and domestic institution of the States;² and so much so that afterwards, in 1864, Lincoln himself recommended to Congress the constitutional amendment for the abolition of slavery,³ an amendment which was finally sanctioned on the 1st. of February, 1865, and is now the XIII of the Constitution.

I trust to the eloquence of the above facts in order to ascertain whether there is any truth in the assertion to the effect that in the neighboring Republic the Executive Power has never exercised extraordinary faculties and that it has

1 United States Statutes at large, vol. XII, p. 1268.

2 Spencer's History of the United States, vol. IV, p. 261 and Whiting's War-Powers under Constitution, 43d. ed., p. 393.

3 The same work and volume already quoted, p. 606.

never legislated. And the following remarkable circumstance should be borne in mind: in the said country Congress never failed to convene, even in the darkest days of the war: the thirty-sixth up to the thirty-ninth congresses performed their functions regularly from 1861 to 1866. And in Mexico we know that since the 17th. of December, 1857, up to the 9th. of May, 1861, and afterwards from the 31st. of May, 1863, till December 8, 1867, it was impossible for the national representation to meet.

After the brief study I have just made of the American Institutions, I believe it opportune, I even think it necessary, in honor of our Constitution which has been so unjustly censured, to offer an important remark. The American Constitution contains no precept like article 29th. contained in ours: section 8th. of article 1st. only provides that the privilege of *habeas corpus* may be suspended in cases of rebellion or invasion, but without stipulating what authority may decree the said suspension. And from this omission it has been sought to conclude that the President is authorized to decree the same. I need scarcely allude to the superiority of the Mexican Constitution over the American upon this point. Neither does the American Constitution provide whether in certain dangerous crises can extraordinary authorizations be conferred upon the Executive; but the historical truth is that when their employment has become necessary they have been made use of even as far as legislating upon matters which Congress itself was forbidden to resolve upon, the said omission in the constitutional text having been filled with reasons taken from the very spirit of the Constitution as revealed in the preambles of the same, as also from International Law, or from the necessity of the self-defense of the people, who, upon approving their Constitution, could not for a moment

intend to sign their own death-warrant. In order to fill the gap which such an omission left in the Constitution, in order to satisfy the want of a precept like the one contained in our article 29, a work has been written in the United States, of which *forty-three* editions have been published from 1862 to 1871.¹ This is a work which, in its endeavor to support the dictatorial powers of the President in time of war, arrives at conclusions which our public laws condemn; but the said work is a standing testimony of the fact that the Constitution which provides for certain abnormal and exceptional situations, and which furnishes adequate resources in order to overcome the same, is far wiser than that which believes in a perpetual era of peace and in the regular exercise of the public powers.

For us, who are the sincere friends and staunch partisans of the Constitution of 1857, it is very gratifying that the comparative study of the two fundamental laws should lead us to the above forcible conclusion: but the greatest praise I can possibly bestow upon the Constitution of Mexico is to apply to its article 29 an idea of Mr. Whiting, the author of the said book, in reference to what he terms the «war-powers.» If in the American Constitution there existed a precept like the one contained in the above mentioned article of the Mexican Constitution, we might say, by altering the words only but not the idea of Mr. Whiting, that the Southern States would not have rebelled; and that had they done so, notwithstanding the said article, the Federal Power could have crushed the rebellion in its cradle.² Let any one now pre-

1 War-Powers under Constitution of the United States by William Whiting.

2 If Southern rebels, with all their treasonable notions on the subject of State rights, had recognized and appreciated the War-Powers of the Union, it is not probable that they would have attempted armed rebellion. Had the

tend to commend as something perfect in the American Constitution, that which is nothing but a lamentable gap which ours does not contain, and which in the former has been filled with interpretations which, strictly speaking, are untenable!

F

May I, from the above statements, come to the conclusions which I have endeavored to establish? I think it possible: the said conclusions are as follows: the extraordinary powers which in 1863 were conferred upon President Juarez for the defense of the national independence which was then threatened by the French war, authorizing him even so far as to conclude treaties, were legitimate and constitutional: the law of the 16th. of August, 1863, which the said President issued for the punishment of the parties who had committed the crime of high treason, is a real and obligatory law, which does not violate article 50 of the Constitution: this *amparo*, therefore, cannot be granted, because the act which has given rise to the same is founded upon a law issued by the Executive.

Upon concluding the long analysis which has accupied so much of my time with regard to the question of extraordinary powers, in order to found my opinion, which opinion, I regret to say, is contrary to a writ of execution issued by this

loyal people of the country and the administration promptly assumed and with energy employed those powers, treason might have been strangled at its birth; and if the judicial department unbiassed by political proclivities of individual judges, shall ultimately sanction a liberal and statesman-like construction of the sovereign and belligerent rights of the people, under our Constitution, it will, by so doing, strengthen the power of our Government to defend itself against rebellion; it will increase our confidence in the stability of the republic, and it will become a new safeguard against the dangers of civil war." War-Powers under Constitution, p. X.

Court, allow me to utter a few words respecting my personal opinions. Can these lead any body to believe that I am a partisan of dictatorships or of tyrannical governments? Can any body charge me with having defended the abuses which have been perpetrated in our country under the shadow of the extraordinary powers? Can my words be interpreted as the eulogy of the crimes which certain Congresses have committed in granting ample powers to the President, solely with the object of forwarding partisan interests? . . . All this would be very unjust; because I most emphatically condemn those abuses, because I have deprecated the said crimes, when the abuse of the extraordinary powers and the systematic pressure brought to bear upon the public vote have sought to establish upon the ruins of the constitutional régime, a perpetual and unrestrained dictatorship! . . .

But deprecating as I do the said abuses, the said crimes, I cannot out of simple hatred towards the same and much less as a Magistrate, disavow nor ignore a constitutional precept which was written for such trying times as those of the war of reform and of the French intervention. Admitting as I do that the extraordinary powers have been granted too often, deprecating that they should have been so ample upon many occasions, reaching so far as to invade the local régime of the States, disapproving the nonresponsibility with which they have been employed, since congresses do not take pains to examine the acts executed by virtue of the same, etc., etc., I cannot, notwithstanding all this, entertain even a single doubt respecting the legitimacy of the powers which sustained the war with France, and much less can I nor do I wish, to deprive my country in the future of the resources which article 29, so often quoted, which international law and even common sense itself, afford her for the defense of

her sovereignty and independence, should she unfortunately have to sustain another war. If the said article has been improperly used, as cannot be doubted, even so far as employing it as a weapon against our institutions, those abuses can in no manner justify the disavowal of a precept upon which greatly depends the preservation of the independence itself. These explanations have become necessary in order to assume, as I do, the responsibility of my opinions such as they are.

IV.

But this *amparo* is solicited upon other grounds. I cannot abstain from examining the latter even though it be briefly, so as not to trespass upon the attention of the Magistrates who are listening to me.

It is alleged that article 7th. of the law of August 16, which authorized the Council of Ministers to resolve upon all questions pertaining to confiscation, violates article 21 of the Constitution which only recognizes the judicial power as a competent authority to impose penalties such as is undoubtedly the act of confiscation, concluding from this that article 50 has also been violated, inasmuch as the said article forbids the reunion of any two powers in a single person. This argument can be very easily answered. The suspension of guarantees to which reference is made was so complete, and the authorizations conferred upon the Government were so ample, that they had no other limit but the one expressed in article 4 of the law of October 27, 1862, enforced by that of May 27, 1863. The latter article says: «It is hereby declared that the Executive has no authority to interfere nor to resolve upon civil matters between private individuals, *nor upon cri-*

iminal affairs when the latter only refer to offences against private rights.» And as the offence of treason is by no means a criminal affair of that nature, but one that affects public right, it is very clear that the said offence was not included in the exception of the law above referred to; and from this we must conclude that during the war with France, the guarantees in question were suspended, and that therefore, upon this ground, the *amparo* should not be granted.

But, it may be objected, that although all this is very true, it is no less true that the penalty of confiscation is always unconstitutional, because article 22 of the fundamental Code declares it abolished «*forever*,» a word which the legal text only employs upon that occasion, reproving the penalties which civilization and the philosophy of penal laws have condemned. This objection suggests at once the following constitutional question: can the guarantee conferred by the said article 22 be suspended, or does the word «*forever*» which it employs signify that confiscation can never be decreed, that the said guarantee can never be suspended? Article 29, in my opinion, resolves this question very clearly. The said article provides that «the guarantees conferred by this Constitution may be suspended, *excepting those that assure the life of man.*» From this precept we may conclude without any doubt whatever that the guarantee which forbids confiscation may likewise be suspended.

But did Congress really suspend the said guarantee in 1863? I am inclined to think so, by virtue of the accord which exists between the provisions of the laws of May 27, 1863, of October 27 and May 3, 1862 and of the 11th. of December, 1861. The authorizations granted to the Executive by the said laws are so ample and they restricted to such an extent the enjoyment of the constitutional guarantees, that

it cannot be doubted that the President had authority to decree the confiscation of property as a war-measure against the enemies of the Republic.

The law of December 11, 1861, fully authorized the Executive to dictate all those measures which might be deemed convenient, *whith no other restriction* but that of saving the independence and integrity of the national territory, the form of government established by the Constitution and the principles and laws of Reform.» The law of May 3d., 1862, extended those authorizations with the above mentioned restriction besides another one to the effect that the Executive should not be able to intervene in judicial questions arising among private individuals. The law of October 27, of the same year, confirmed all the provisions of those laws adding a new restriction to the effect that the provisions of Title IV of the Constitution should not be infringed upon.

And finally the law of May 27, 1863, extended again those authorizations with the restrictions above mentioned, and furthermore delegated to the Executive the power of concluding treaties, but without being authorized to admit of any intervention whatever.

In view of these very ample authorizations, who can entertain any doubt as to the power of President Juarez to decree in the law of August 16, 1863, the penalty of confiscation of the property belonging to the foreign enemy and to his allies? Even to entertain any scruples upon this point would not only be to ignore the laws I have referred to, but it would even be to deny to the Republic the rights which are granted to it by International Law, in case of war, for the defense of its independence and sovereignty.

In order to better found my opinion upon this point, allow me to make at least a few brief remarks regarding it under

the light of international and constitutional law. I will begin by affirming that our Constitution, liberal and progressive as it is, upon abolishing confiscation *forever*, did not by any means intend to establish a precept which should be inscribed in the Code of Nations,—it only excluded from our laws a penalty which is condemned by civilization. Of this truth, fraction XV of article 72 of the Constitution affords us an irrecusable testimony, because the said fraction authorizes privateering and sanctions the legitimacy of the confiscation of spoils on land and sea. The said constitutional text recognizes the rights which war confers upon belligerents according to the law of nations, and among the said rights is found that of capturing and confiscating the enemy's property.

The Constitution could not establish international precepts, it only sought to establish interior public laws for Mexico: it neither sought to limit with its provisions the rights which are granted to the Republic, as a sovereign and independent nation, by International Law, because it would be absurd and unreasonable to suppose that a people would be willing to accept a Constitution which would tend to destroy their sovereignty, that they would be willing to surrender the rights of independence, of equality and of self-defence which all nations possess. If it should be sought to maintain that some constitutional precept has limited a single one of those international rights, the forcible conclusion of this would be, that as the said precept is obligatory for the Mexicans and not for foreigners, the Government of Mexico would remain under very unequal conditions respecting those of other countries.

This consideration, which is so evident and conclusive, induces me to believe that the theory which affirms that the

Constitution also prevails upon international affairs, is false and exceedingly dangerous for the autonomy of Mexico; because it also affirms that during a foreign war Mexico cannot make use of reprisals, nor of retortion and that she can neither confiscate nor, in a word, deny the enemy any of the individual guarantees. I profess a very different theory, that which teaches us that in matters of that kind it is not the constitutional but the international law that which defines the limit of the sovereign rights of every country: I am of the opinion, like the illustrious John L. Adams, that: «The war power is only limited by the laws and usages of nations. That power is formidable, and although strictly constitutional, it breaks down the barriers so carefully erected for the protection of liberty, of property and of life.»¹ It is not now opportune to discuss those theories; it suffices for me to have alluded to the above considerations, even without taking into account the opinion of Adams which is the one I entertain, in order to conclude from them that article 22, in the part which refers to confiscation, is not applicable to international affairs.

This is so true, so *constitutional* is the confiscation decreed by a belligerent against the property of the enemy, that fraction XV of article 72 already quoted, leaves no doubt whatever upon the matter; it is so true that when Mexico was invited by France to adhere to the declaration of the Plenipotentiaries of the Congress of Paris which abolished privateering in March, 1856,² Mexico refused to do so, and she was perfectly right, because having no shipping nor navy, in case of war she would be deprived of the only means at her disposal for combatting the enemy's shipping and navy. Far

¹ War-powers under Constitution, p. 77.

² Mexican International Law, vol. I, p. 960.

from considering this resistance on the part of the Mexican Government as contrary to the Constitution in not wishing to abolish privateering and the confiscation of the enemy's property captured at sea, I think that the said act merits the approbation of every Mexican.

Having established these truths, which in my opinion cannot be doubted, there only remains to be resolved the following question: according to international law could Mexico, during the war with France, decree and apply the penalty of confiscation against her enemies? Could Mexico confiscate the property which was here, in the Republic, acquired by the unfortunate Archduke Maximilian, that which belonged to Marshall Bazaine, that which pertained to Almonte? There are certain questions whose mere proposal resolves them: certain truths whose sole enunciation demonstrates the same. Why quote authorities in order to prove that nations possess and have but very recently exercised the right to confiscate the enemy's property? Why invoke the names of able jurists, or call to mind the terrible laws of confiscation of the United States during their late war? I think it would be losing time to take pains to show all this.

Holding as I do that Mexico could confiscate the property of her enemies during the foreign war, I desire to enter into a single explanation so that my opinions may not be erroneously interpreted. I am very far from believing in the barbarous nature of the Roman maxim, « *Adversus ostem æterna autoritas est,* » and I do not even admit the doctrines of the ancient writers and jurists who declared that all the property belonging to the subjects of the unfriendly Power and found

1 Acts of the 6th. of August, 1861 (U. S. Stat. at large, vol. XII, p. 316), of July 17, 1862 (Work and vol. quoted, p. 589) and of March 12, 1863 (Do. do. p. 820).

within the territory of the other belligerent could be confiscated: on the contrary, I acknowledge and applaud the progress made by International Law upon this point; and for this reason I do not by far pretend to hold that all the French property found within the Republic when the war broke out could have been confiscated. But who can fail to see the immense difference which exists between this and the case under discussion? Can any body fail to understand that the exception established in favor of peaceful foreigners, who perhaps were friends of Mexico, does not and cannot apply to her foes, to those who took part in the war, either using arms against her or intriguing in the European cabinets, that the latter might work against the independence of the Republic?

Therefore, even though article 22 of the Constitution had not been suspended by the laws of which I have made mention, confiscation would in this case be legitimate, and cannot, on account of the *amparo*, be invalidated, because the said article has no application in international matters and also because International Law authorizes that class of measures which are only the exercise of the rights of war which the Constitution recognizes. However much I may be of the opinion that confiscation is a penalty not to be tolerated in our penal codes, an opinion which I have on another occasion defended before this Supreme Court, the present case comes under the provisions of other laws and cannot be considered simply in view of our national penal laws. For these reasons I think that the *amparo* which has occupied so much of my time is neither to be granted on account of confiscation being a penalty which has been abolished amongst us.

I must now end my long task, although with the fear that I have trespassed too much upon the attention of this high

Tribunal. Let my apology for this, however, be the desire I have had of founding the vote I am about to cast against the *amparo* which has been solicited in this very serious subject.

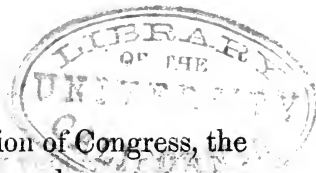
Opinion of Magistrate Bautista.

Magistrate Bautista said: that after having heard the addresses delivered by the able Mr. Montes and by the President of the Court, it might be considered as temerity on the part of the speaker to address the said Court, with the object perhaps of combatting one of those addresses, but the necessity of complying with his duty and of founding his vote, compels him to make a few remarks, stating however, beforehand that he has not devoted any study to the subject with which he was not acquainted until to-day, and that far from entertaining any sympathies for the traitors, he considers them as great criminals of the first rank, and believes that no penalty is sufficiently severe for the punishment of the said crime in our penal code. But between this and the violation of the constitutional precepts there is a profound abyss, and the speaker will never in any manner contribute towards the discredit of those precepts, notwithstanding the many abuses which have been committed in their name.

The address of Mr. Montes is eminently constitutional, and the speaker accepts it in all its parts, and therefore withholds from repeating any of the arguments contained in the same: and respecting that of Chief-Justice Vallarta, Mr. Bautista said: «I deem it worthy of being published, because it is a lengthy treatise formed during many days, in view of the necessary documents and of the most respectable authorities; it embraces vital questions for the country, which have been

treated with ability and erudition; it is even eloquent, and for all these reasons it merits my respect; but it is not constitutional, and here, in this precinct, in the Supreme Court of Justice, the Mexican Constitution of February 5, 1857, is the most important book in the world, and the history of other nations and the best writers on public and constitutional law occupy a secondary place. For these reasons, and supported by our fundamental Code, allow me to say a few words respecting the above mentioned remarkable address, and those words will serve me in order to found my vote, since it may not be possible to attain any other end in the difficult task I am about to undertake.

Our Chief-Justice presents as the principal ground for his address, the law of extraordinary powers of May 27, 1863, declaring the same strictly constitutional, and thus comes to several hasty and absurd conclusions, and amongst these I find that which asserts that one or more powers may on some occasions be vested in a single person or corporation, and that the legislative power may be vested in an individual, and also that by virtue of the precepts of article 29 of the Constitution, Congress may delegate to the Executive the faculty of legislating. Let us see what article 29 says: «In cases of *invasion* or serious disturbances of the public peace, or any others that may place society in great peril or danger, the President of the Republic only, with the concurrence of the Council of Ministers and with the approbation of the Congress of the Union, and during the recess of the latter with that of the permanent or standing committee, may suspend the guarantees granted by this Constitution, excepting those which assure the life of man: but he shall do so for a limited period, by means of general measures, and in such a manner that the suspension shall not affect any determined party. If



the suspension take place during the session of Congress, the latter shall grant the authorizations they may deem necessary so as to enable the Executive to face the situation. If the suspension occur during recess, the standing Committee shall convoke Congress for their advice and action.»

Thus it is seen that this article did not omit the case of an invasion, but that it foresaw and provided for the same, and even then its desire was that upon the suspension of certain guarantees, Congress, and Congress only, should grant to the Executive the authorizations they might deem necessary so as to enable the former to face the situation. And therefore that law which conferred such unlimited powers upon the Executive is not constitutional, because it did not adhere to the express text of article 29.

On the other hand, this question is not a matter of form but a matter guarantees, which are the basis and object of our institutions; and if the said article 29 desired at all events to attend to the salvation of the country and to furnish public power with all the authorizations which might be deemed necessary precisely for a case of foreign invasion, which is the most serious that may occur, it did not forget the life of man and all the other precepts which form the basis of our institutions. Well then, upon the suspension of some of the guarantees, not in an arbitrary manner, but when necessity so requires it, it is natural that the autorizations shall correspond to the suspension of the said guarantees; and thus, should soldiers be needed, the guarantee contained in article 5 is suspended and recruiting by force is authorized; if money be required, the guarantees contained in article 27 and in fraction 2d. of article 31 are suspended, and in this manner all the money needed can be obtained, and the same thing may be said of the other guarantees.

In the harmony which should ever exist between the Legislative and Executive Powers, and notwithstanding the provisions of the said article 29, the latter power addresses initiatives to Congress regarding the suspension of certain guarantees and asks for the authorizations that may be deemed necessary, and then Congress grants them; but those authorizations never have included the guarantees not suspended, and much less can it be inferred that Congress delegates all the power to legislate upon the Executive, because this is very far from being included in the authorizations to which the said article refers. The former is in conformity with the constitutional text; the said authorizations, however numerous they may be or however extensive, do not embrace all the power to legislate; they are merely the basis of the powers which Congress may deem necessary so as to enable the Executive to face the situation, and furthermore their object is to empower the said Executive to dictate, within the limits of those authorizations, all the measures that may be deemed convenient; and what is still of far more importance, viz: that the people may become acquainted with the said authorizations so that the Executive may not go beyond the limits of the same in employing them, availing himself of the extraordinary powers conferred by Congress.

From the express tenor of the said article, we must come to the conclusion that Congress cannot delegate upon the Executive all the power to legislate, because this would be in open violation of the provisions of article 50, and also because article 29 empowers the said body to confer upon the Executive certain authorizations, after the suspension of some of the guarantees, and this is quite different from delegating the whole of the power to legislate.

The law of extraordinary powers of May 27, 1863, which

authorized the Executive in such an *unlimited* manner to confront the situation, was an especial law, the effect perhaps of fear or of pure patriotism under the circumstances, but it was not a constitutional law, because it did not conform with the precepts of the said article 29, and for these reasons it cannot be invoked at all in the study of constitutional law, nor can it serve the President of the Court in support of some of his opinions respecting the idea that the Executive may legislate, and that Congress may delegate upon the former all the legislative power.

Neither can it be said that the great respect we entertain towards our Constitution can endanger the national independence, if the Executive lack the necessary authorizations with which to defend the same; because such a case is impossible, since our Constitution is strong enough in itself and provides fully and furnishes the resources and authorizations with which to combat any invasion; so that if at any time we are vanquished, it will be on account of our misfortunes or of our weakness, but not because our Constitution has left any gap, since with wisdom and forethought it has provided for such an emergency.

What has happened hitherto is that there has been no desire to comply with article 29 of the Constitution; it has been misinterpreted and a different sense has been given to it at times, so as to form dictatorships even in cases that were not included within the text of the said article; and afterwards those abuses are offered as a basis in order to arrive at conclusions which are not and never can be strictly constitutional.

I will not sustain that our Constitution is a perfect work, when this is impossible in all human affairs; but in this case I think that it is disparaged by those who appeal to extraor-

dinary means when those that it provides for cases of invasion are so ample and fully suffice to overcome any situation.

On the other hand this law was to last, according to its express text, until thirty days after the reunion of Congress, *or before if the war with France should come to an end*, and as Congress did not meet again until the latter part of 1867, it is clear that the said law remained in force until February, 1867, when the war with France came to an end and the invading army abandoned the national territory.

Our President believes, nevertheless, that the war lasted even after the months of August and September of the same year during which was decreed and carried into execution the penalty of confiscation on the house in question, because France did not pass a law, declaring that the war had come to an end nor was any treaty of peace concluded, which is one of the means of ending war. I think that the invasion by France which commenced *de facto* without any previous declaration of war by means of a law, terminated likewise *ipso facto* the moment the French army abandoned the national territory after having suspended hostilities, there having been no necessity for the passage of any law making the said declaration, and much less was there any necessity for the conclusion of a treaty of peace, and it might be said that since that time up to the present war existed with France, and this is an inadmissible absurdity.

It is true that very respectable authors state that this is the means of putting an end to war between two nations; but over and above those authors I have the Mexican law which provided that the ample faculties should last until the war with France should come to an end, without saying anything regarding a treaty of peace, which is something quite

different since nations have a perfect right to conclude them or not, and they need not be a necessary consequence of war. The result, therefore, is that the war with France ended *ipso facto* in the same manner as it began, and that it ended in February, 1867.

Let it be observed, furthermore, that the guarantee contained in article 22 of the Constitution which prohibits the confiscation of property, was not suspended by the laws of extraordinary and unlimited powers, and that for this reason it may be held that the Executive could do nothing against the said guarantee, because it prevailed and was in full force notwithstanding the unlimited powers; but even admitting that, by virtue of those unlimited faculties or of the war-powers, or above all, for the salvation of the country, the Executive could impose the penalty of confiscation, doing away with all consideration respecting its unconstitutionality, in that case his competency was derived from those faculties, because outside of the latter it were useless to look for the former; and as those faculties ended in February, 1867, as has been shown, it is evident that during the months of August and September of the same year, in which the said penalty was decreed and carried into effect, the Executive lacked authority for the purpose, because the Republic had saved her autonomy and independence and the Constitution had recovered its full force and vigor, and then the said unlimited faculties no longer existed, but in their stead there prevailed article 128 of the Constitution which says: «This Constitution shall lose none of its force or vigor, even though its observance be interrupted on account of any rebellion. In case that on account of any public disturbance there should be established a government contrary to the principles it contains, so soon as the people recover their liberty, its ob-

servance shall be restored, and in accordance with the same and with the laws which may hereafter be passed by virtue thereof those parties who may have figured in the government emanating from the rebellion as well as those who may have fostered the same, shall be tried.»

In accordance with these principles, I think that had the President imposed the penalty of confiscation within the term of the faculties, even though the same had been subsequently carried into effect, nothing could be objected; but this was not the case; and this omission or neglect on the part of the authorities cannot be remedied within the constitutional precepts but by violating them again, as is happening with this case of *amparo* wherein it is sought to establish doctrines which are wholly opposed to the writ of execution of the Supreme Court of Justice of August 10, 1877, in the case of the *amparo* of Goribar.

It is, therefore, evident that in August and September, 1867, only the Constitution and the laws that emanated from the same could have been invoked for the imposition of the penalty which is now being sustained, because the extraordinary powers had absolutely come to an end and the latter could not be extended beyond the period fixed by the very law which granted them.

We must not look for the duration of those powers in the meeting of Congress nor in the words uttered by the President in his address, wherein he said that he would make no further use of those powers: we are to find the duration of the same in the text of the law itself which provided: that those powers should cease so soon as the war with France should come to an end; and to say now that such a war has not ended because no treaty of peace has been concluded, is almost laughable, notwithstanding everything that has

been said to the contrary and all the authorities which have been quoted, as it is also preposterous to establish the duration of those powers in view of what the President said in the opening of Congress, because all these arguments cannot be brought to bear against the express text of the law referred to.

I forbear to take into consideration the penalty of confiscation in its unusual and transcendental nature, because I consider it inadequate for the punishment of the crime of high treason: I do not attack it because I deem it too severe for the chastisement of those who commit the crime referred to, inasmuch as I would recommend the application of all kinds of penalties for the punishment of the same; but I deny the authority to apply such a penalty when the law of extraordinary powers had ceased, and when the Constitution had once more attained its supremacy.

Perhaps my remarks may appear to be too much in favor of our Constitution; but that is the Code to which I must subject my conduct here, in the Supreme Court of Justice, wherein I occupy a post thanks to the kindness of the Mexican people; and since the history of other peoples and the doctrines established by jurists are contrary to the text of the above, I follow and adhere to the Constitution as the supreme law of the country to which I have a thousand times sworn fidelity.

I shall, therefore, vote in favor of the sentence pronounced by the District Judge who granted the *amparo*.

Journal of February 19, 1879.

There were present at this session: Chief-Justice Vallarta, Magistrates Altamirano, Montes, Alas, Martinez de Cas-

tro, Bautista, Avila, Vazquez, Guzman, Saldaña and the Prosecuting Attorney.

Absent, with leave, Magistrates Ramirez, Ogazon and Blanco.

The journal of the previous session was approved. . . .

Secretary Gonzalez Angulo read an account of the suit of *amparo* put forward by Mrs. Dolores Quesada de Almonte against the confiscation of house n^o 10 in the 1st. Street of San Juan. Magistrate Montes spoke in favor of the *amparo* and Chief-Justice Vallarta against it, retaining the floor for the next session.

Journal of February 20, 1879.

There were present at this session: Chief-Justice Vallarta, Magistrates Altamirano, Alas, Martinez de Castro, Bautista, Vazquez, Avila, Guzman, Saldaña and the Prosecuting Attorney.

Absent, with leave, Magistrates Ramirez, Ogazon, Montes and Blanco. . . . Chief-Justice Vallarta finished his address regarding the suit of *amparo* put forward by Mrs. Quesada de Almonte. Then Mr. Bautista spoke in favor of the *amparo* and Messrs. Altamirano and Guzman against it.

After the debate closed, a vote was taken respecting the sentence pronounced by the 1st. District Judge, by which *amparo* was granted to Mrs. Almonte, and the said sentence was reversed by the votes of Messrs. Saldaña, Guzman, Avila, Vazquez, Alas, Altamirano and Chief-Justice Vallarta: the Prosecuting Attorney and Messrs. Bautista and Montes voted in favor of the *amparo*.

Journal of February 27, 1879.

There were present at this session Chief-Justice Vallarta, Magistrates Altamirano, Montes, Blanco, Bautista, Vazquez, Avila, Guzman, Saldaña and the Prosecuting Attorney.

Absent wiht leave: Messrs. Ramirez, Ogazon, Alas and Martinez de Castro.

The journal of the previous session was approved. . . .

Mr. Blanco having with drawn, the Chief-Justice read the draft of the sentence in the suit of *amparo* put forward by Mrs. Dolores Quesada de Almonte, for the drawing up of which he was commissioned, and is as follows:

« Mexico, February 20, 1879.

« *Considering, 1st.*—That on the 20th. of August, 1867, on which date the order for the confiscation of Mr. Juan N. Almonte's property was issued, the extraordinary powers granted to the Executive by virtue of the law of May 27, 1863, had not yet expired, because the said law provided that the same should last «until 30 days after the forthcoming reunion of Congress in ordinary session, or before that time should the war with France have come to an end,» and on the 20th. of August nothing of this had taken place. The period marked by the said law had not expired, because after the 31st. of May, 1863, Congress were unable to resume their functions until after the 8th. of December, 1867, and as during this whole period there was no ordinary session, the said term of 30 days did not commence to run from the 20th. of August. Nor had the other conditions prescribed by that law been complied with, because although during the said month

of August there existed in reality no hostilities with France, and the latter had withdrawn all her troops from the national territory, this did not suffice, according to International Law, to put an end to the state of war which existed between the two belligerents, inasmuch as far from having concluded any treaty making such a declaration, or of having renewed the former relations of peace, the President, in his opening address before the 4th. Congress, stated that all our treaties with France were broken as well as all our relations with the said Power. On the other hand as the Mexican Government has kept up that same policy up to the present time, this Supreme Court cannot declare that on the 20th. of August, 1867, the war with France had come to an end, because it is not one of its attributes, but pertains to the other Departments of the Government to declare the state of peace with all the legal consequences which such a declaration involves, regarding the renewal of treaties broken by war, or the celebration of new ones.

Considering 2d.—That the extraordinary and very ample powers which the law of May 27, 1863, and the other similar laws of October 27 and May 3, 1862, and December 11th. and June 7th. 1862, granted to the Executive so as to enable him to save the national independence, are constitutional, since they are authorized by part 2d. of article 29 of the Constitution. This truth can be demonstrated with the following considerations:

I. It is not true nor exact that article 50 of our fundamental law can be interpreted in the sense that Congress can *never* grant to the Executive *authority to legislate* because *never* can two of the three powers into which the Government is divided be vested in one single person or corporation. There are many constitutional texts which prove that in some ca-

ses, under certain given circumstances, the reunion of those powers in one person or corporation is legitimate, such as articles 103, 104 and 105, as amended, which confer upon the legislative power judicial *authority* to take cognizance of the offences committed by high officials; such as fraction X of article 85 which empowers the President to conclude treaties, which treaties, according to fraction 1st., letter B of article 72 as amended, are to be approved by the Senate only, thus excluding the action of the House of Deputies; such as article 21 which empowers the administrative authorities to impose conventional penalties for slight offences. All these texts, and others that might be quoted, clearly show that the adverb «*never*,» which appears in article 50, should not be taken in its grammatical sense: that the rule which the said precept contains is not so absolute as to preclude any exceptions recognized by the constitutional text itself. To deny this would be to affirm that the said article 50 is in contradiction with the other articles just quoted. The same reason which compels one to see their accord and to take them in such a manner that the precept of the one shall not destroy those of the others, requires that articles 29 and 50 be interpreted in such a manner that the former shall not be in contradiction with the latter, as is the case in sustaining that if Congress deem it necessary in some serious case to delegate to the President the power to legislate, such delegation is always to be considered as unconstitutional, since «*never*» can two powers be united in one person. The judicial jurisdiction of Congress in certain cases, is an exception to the precept contained in article 50, and so is the delegation of the legislative power upon the President, since both exceptions are supported by constitutional texts.

II. The second part of article 29 says to the letter that

Congress «shall grant the authorizations they may deem necessary so as to enable the Executive to face the situation.» One of the cases wherein the authorization to legislate should be considered necessary, is undoubtedly when, during a foreign war Congress foresee that their existence becomes impossible, and when they must seek to save the national independence; and such a case is really presented by the suit of *amparo* in question. If the third Congress who apprehended that they would be unable to perform their duties owing to the occupation of the capital by the French army and on account of other hazards of war, had not granted to the Executive in 1863 the authority to legislate, or if this Supreme Court should now declare that such authorization was unconstitutional, we would have to come to the inevitable conclusion that not only was everything that was performed during the war with France in defending our independence, an attack upon the Constitution, but, what is still more serious, that Mexico, from the moment Congress disappears owing to the machinations of her enemies, cannot any longer maintain her sovereign rights nor defend herself against her domestic or foreign foes, since the President has been unable to levy taxes, to increase the army, to dispose of the National Guard of the States, nor to issue, in a word, any law that may alter or interfere with the estimates in time of peace, and all this notwithstanding the fact that Congress may have conferred upon him the authority to do everything that should be required. This argument *ab absurdo* has been clearly proven by the French Intervention, and sustains those which show the accord that exists between the constitutional texts and enables us to affirm that article 50 does not prohibit the President to legislate whenever Congress, in view of exceptional and serious cases, may deem it necessary to confer

upon him that authority so as to overcome a difficult and dangerous situation.

III. The Constituent Congress understood and approved the second part of article 29 in this sense. The facts which show this may be summed up in the following manner. That which at present is the first part of the said article was presented as article N^o 34 in the session of the 26th. of August, 1856, and then withdrawn with the consent of Congress; but it was again presented without any alteration whatever in the session of the 21st. of November. Fully discussed, it passed on the following day by sixty-eight votes against twelve. The majority of the House, not being satisfied with the suspension of guarantees allowed by the said article, and apprehending that neither this nor the constitutional faculties of the President would suffice to overcome certain situations of exceptional seriousness, heard the reading of the bill on dictatorship offered by Mr. Olvera in the session of December 9, 1856, and referred it to the Committee on Constitution. Neither the latter nor Congress saw fit to approve the bill as its author had presented it; but they accepted the spirit which had suggested the same and the arguments which supported it; and in the session of January 24, 1857, that which is now to the letter the second part of article 29 was passed by a vote of fifty-two yeas against twenty-eight noes. This account of the facts shows that the Constituent Congress believed that besides the suspension of guarantees, which was passed and completely finished during the sessions of November 22, extraordinary powers vested in the Executive might become necessary under exceptional circumstances; and also that they thought it proper to confer upon the said Executive the *authorizations which Congress might deem necessary so as to enable him to face the situation*, thus leaving

to the patriotic discretion of Congress the delegation even of the power to legislate, should they deem it necessary in order to overcome the perils that might endanger our institutions or our country. Therefore, it does not follow that because the Constituent Congress rejected Mr. Olvera's bill respecting the triumvirate, they also rejected the idea of granting extraordinary powers, even so far as to legislate, should Congress deem them necessary. This conclusion is not only in open contradiction with the facts referred to, but also with the precise text of part second of article 29, approved on the 24th. of January.

Considering, 3d.—That the law of August 16, 1863, issued by the President, by virtue of the authorizations which were granted to him by the law of May 27 of the same year, is legitimate, as has been shown in the preceding considerandum, and that, therefore, the appeal of *amparo* cannot be brought to bear against the same.

Considering, 4th.—That article 7th. of the said law of August 16, which authorized the Council of Ministers to resolve upon questions regarding confiscation does not violate article 21 of the Constitution, since by virtue of the authorizations granted to the Government the guarantees contained in the said article were suspended, because the law of May 27, 1863, extended «the suspension of guarantees provided for by that of October 24, 1862, and the concession of the powers granted to the Executive,» and article 4 of the same law of October 24 only limits the extraordinary powers of the Executive respecting judicial matters in the following literal terms: «It is hereby declared that the Executive has not the power to interfere in nor decide upon civil affairs arising among private parties or criminal matters wherein may be involved offences against private rights,» and inasmuch as

the crime of treason is one of those that affect public rights, it was by that fact beyond the limits prescribed by the said law.

Considering, 5th.—That although article 22 of the Constitution ordains that the penalty of confiscation is abolished *forever*, it cannot be doubted that the guarantee which regarding this point is contained in the said article, may likewise be suspended, since article 29 declares that «the guarantees granted by this Constitution may be suspended with the exception of those which assure the life of man.»

Considering, 6th.—That the accord which exists between the laws of December 11, 1861, May 3d. and October 27, 1862, and May 27, 1863, proves that the said guarantee was also suspended, although not in an express manner. The first of the said laws, «authorized the Executive in an unlimited manner to dictate all the measures which he might deem convenient, with *no other restrictions* but that of saving the national independence and integrity, the form of government established by the Constitution and by the laws of Reform.» These ample powers and authorizations were extended until May 27, 1863, upon which date the President was empowered even so far as to conclude diplomatic treaties, and all this with the object of saving the national independence against the invasion of the French. And in these most ample authorizations we should also include that of dictating all the *convenient measures* against the traitors who joined the foreign enemy, measures which had no other restriction but that expressed by the law, that is, of saving the national Independence, the Constitution and the laws of Reform. Therefore, to suppose that the constitutional precept which prohibits confiscation remained in force respecting traitors, is not only to disown the spirit which dictated the said laws, but is to

contradict and disown their literal tenor which withdrew all restrictions from the same, excepting the one already mentioned, as to the measures which the Government might deem fit to dictate in order to repel the foreign enemy and their allies.

Considering, 7th.—That even if the said laws which granted such ample powers to the Executive should not be interpreted in the above sense, neither should the enemies of the Republic engaged in a foreign war invoke in their favor article 22 of the Constitution to the effect that their property cannot be confiscated; because although the said article declares confiscation abolished *forever*, this is to be understood as an ordinary penalty in our Penal Codes, and the said precept cannot prevail in international matters nor limit the rights which are conferred upon belligerents by International Law. This truth, which besides all the other arguments which might be brought to bear in its support, is shown clearly by fraction XV of article 72 of the Constitution which sanctions privateering, and it recognizes the legitimacy of the prizes captured on land or sea, and it accepts, as it could not fail to accept, the precepts of International Law respecting the rights of peace and of war.

Considering, 8th.—That as the Constitution of the Republic cannot establish international precepts but only determine the interior public laws of Mexico, it were absurd to apply the said Constitution to matters and affairs which can only be regulated by the law of Nations; because such an application would but serve to limit and restrict the rights of Mexico which are acknowledged by the said law, without even entertaining the hope of any reciprocity on the part of foreign powers, who are under no obligations as regards our Constitution; and the result of such an absurdity would be

that Mexico in her international relations would remain under very unequal terms respecting foreign governments.

Considering, 9th.—That as the Constitution recognizes the right of confiscation, as it is sanctioned by international law whenever the latter and not the former has to be applied in certain matters, although the guarantee contained in article 22 be not suspended, the property of the enemy may be confiscated in the Republic, according to fraction XV of article 72 already quoted, and under the terms and in the manner prescribed by International Law.

Considering, 10th.—That during the war between Mexico and France, it was not the Constitution but International Law which defined the rights and duties of the belligerents, and that among the said rights that of capturing and confiscating the enemy's property on land or sea is fully recognized, without it being included among the limitations which in the exercise of that right have been established by the philosophical theories of modern authors, that of the enemy's property who makes war personally and whose property is captured by the other belligerent; the consequence of all this is that, even had the constitutional guarantee on confiscation not been suspended, the Government of Mexico could impose the same, exercising the powers of war acknowledged by International Law and in due representation of the sovereign rights of the Republic.

Considering, 11th.—That this Supreme Court, in its writ of execution of July 2d., 1869, in a case similar to the present one, declared that the penalty of confiscation imposed upon traitors by the law of August 16, 1863, does not violate the individual guarantees, because the latter were suspended during the war, and that the said law is legitimate as having emanated from the ample powers which were conferred upon

the Executive by the law of May 27, 1863, and other similar laws.

In view of the above considerations, and founded on articles 101 and 102 of the Constitution, it is hereby declared: that the sentence pronounced by the 1st. District Court of this Capital on the 20th. of July, 1878, ought to be reversed and is hereby reversed: and it is furthermore declared that the Justice of the Union does not shield nor protect Mrs. Dolores Quesada de Almonte as the widow and executrix of Mr. Juan N. Almonte, against the order of August 20, 1867, issued by the Treasury Department, and by virtue of which house n° 10 situated in the 1st. Street of San Juan was confiscated.»

The first considerandum having been put under discussion, Mr. Avila requested that there should be suppressed the words: «And the Mexican Government having, &c.» up to the words «other new ones,» and that the said paragraph be substituted by the following one: «On the other hand, President Juarez in the act of opening Congress, declared that from that moment he ceased to make use of the Extraordinary powers, which declaration Congress accepted, from which it follows that the said date is the one to be taken as the expiration of the said extraordinary powers.» The above modification having been accepted by the Chief Justice, the first considerandum was approved by the votes of the Prosecuting Attorney and of Messrs. Saldaña, Avila, Vazquez, Altamirano and of the Chief Justice: Messrs. Guzman, Bautista and Montes voted against it.

The second considerandum having been put under discussion with the first of its arguments or considerations by which it was supported, was rejected by the votes of Messrs. Guzman, Avila, Vazquez, Bautista and Montes: the Prose-

cuting Attorney and Messrs. Saldaña, Altamirano and the Chief Justice voted in favor of the said clause.

Mr. Avila was commissioned to substitute the same.

The second argument or consideration in which the second clause is founded having been discussed, Mr. Avila stated that he accepted the same, and that in this sense he also accepted the considerandum, and thus the second argument remained as first, having been approved by the votes of the Prosecuting Attorney and of Messrs. Saldaña, Guzman, Avila, Vazquez, Altamirano and of the Chief Justice; Messrs. Bautista and Montes voted against it: and furthermore, at the instance of Mr. Avila, the following words were suppressed: *«comes in support of those which are furnished by the accord which exists among the constitutional texts in order to affirm that article 50 does not forbid the President to legislate, whenever Congress, in certain serious cases may deem it necessary to confer upon him the said authorization in order to overcome a difficult and dangerous situation;»* and it was decided that the same should end with the following words: *«it is made manifest by the French Intervention.»*

The third argument of the same clause was withdrawn by the Chief Justice, the latter stating that although that was his opinion, as it had connection with the first argument already rejected, he thought it should be suppressed.

The third clause having been discussed, it was approved by all the votes excepting those of Messrs. Bautista and Montes.

The fourth having been discussed, it was approved by the votes of the Prosecuting Attorney and of Messrs. Saldaña, Avila, Vazquez, Altamirano and of the Chief Justice; Messrs. Guzman, Bautista and Montes voted against it.

The fifth was discussed and approved by the votes of the

Prosecuting Attorney and of Messrs. Saldaña, Avila, Vazquez, Bautista, Altamirano and of the Chief Justice: Messrs. Guzman and Montes voted against it.

The sixth having been discussed, it was approved by the votes of Messrs. Saldaña, Avila, Vazquez, Altamirano and of the Chief Justice: the Prosecuting Attorney and Messrs. Guzman, Bautista and Montes voted against the same.

The seventh having been discussed, it was approved by all the votes, excepting that of Mr. Montes.

The eighth and ninth were likewise discussed and approved in the same manner as the previous one.

After discussing the tenth it was approved by all the votes, excepting those of Messrs. Bautista and Montes.

The eleventh was discussed and approved by all the votes, excepting those of the Prosecuting Attorney and of Mr. Montes.

Mr. Bautista stated that he had voted in favor of the eighth and ninth clauses, in view of the general ideas they contained; and in favor of the eleventh because it only contains a single fact.

Mr. Montes requested that it appear in the journal of the proceedings that he was opposed to the whole draft, and having withdrawn, he left his negative vote in the Secretary's office.

Writ of Execution of the Supreme Court.

Mexico, February 25, 1879.—Having examined the suit of *amparo* put forward in the 1st. District Court of this Capital by Mrs. Dolores Quesada de Almonte, as the widow and executrix of Mr. Juan N. Almonte, against the order of the Executive of the Union issued by the Treasury Department on the 20th. of August, 1867, by virtue of which, for and on account of the crime of treason, house n° 10 of the 1st. Street of San Juan was confiscated, belonging to Mr. Juan N. Almonte: with which order, according to the opinion of the complainant, were violated the guarantees granted by articles 16, 20, 21, 22, 27, and 50 of the Federal Constitution. Having examined the petition presented by the complainant on the 15th. of March of last year; as also de accompanying documents, with which she indentified her personality, and also that the property in question was acquired by Almonte, who purchased the same from Mr. Nathaniel Davidson, on August 26, 1864, by virtue of a deed drawn up by the Notary Public, Mr. Agustin Vera y Sanchez; the report given by the Treasury Department on the 22d. of March of the same year, in which it is affirmed that, in accordance with the law of May 27, 1863, the individual guarantees were suspended, and that the Executive was invested with unlimited powers, for which reasons he was authorized to pass laws such as that of August 16, 1863, which designated the cases of infidnce or treason and imposed the penalty of confiscation, which was carried out respecting Almonte by order of August 20, 1867, within the period of time fixed beforehand for the duration of the unlimited powers, because

Congress did not meet until many months after the above date; having likewise examined the enclosures of the said report, by which it is shown that after the three notifications prescribed by law, house n° 10 of the 1st. Street of San Juan was sold at auction, and bought by General Francisco Paz for the two thirds of its price and one dollar more as previously valued. Having examined the evidence offered by the plaintiff as also her briefs. Having examined the Prosecuting Attorney's opinion, recommending the granting of the *amparo* solicited, because article 22 of the Federal Constitution had been violated, which prohibits *forever* the penalty of confiscation. Having examined the sentence of the inferior court, dated July 20 of last year, in which, in conformity with the Attorney's opinion, the *amparo* solicited was granted, it being offered as an argument for this proceeding the fact that in August, 1867, the war with France had not only ended but also civil war had come to an end and that therefore the extraordinary powers had ceased, which were conferred upon the Executive by the law of May 27, 1863. And having examined the other documents and evidence bearing upon the subject.

Considering, 1st.—That on the 20th. of August, 1867, on which date the order for the confiscation of Mr. Juan N. Almonte's property was issued, the extraordinary powers granted to the Executive by virtue of the law of May 27, 1863, had not yet expired, because the said law provided that the same should last «until 30 days after the forthcoming reunion of Congress in ordinary session, or before that time should the war with France have come to an end,» and on the 20th. of August nothing of this had taken place. The period marked by the said law had not expired, because after the 31st. of May, 1863, Congress were unable to resume their

functions until after the 8th. of December, 1867, and as during this whole period there was no ordinary session, the said term of 30 days did not commence to run from the 20th. of August. Nor had the other conditions prescribed by that law been complied with because although during the said month of August there existed in reality no hostilities with France, and the latter had withdrawn all her troops from the national territory, this did not suffice, according to International Law, to put an end to the state of war which existed between the two belligerents, inasmuch as far from having concluded any treaty making such a declaration, or of having renewed the former relations of peace, the President, in his opening address before the 4th. Congress, stated that all our treatise with France were broken as well as all our relations with the said Power. On the other hand, President Juarez, upon the act of opening Congress declared that at that moment he ceased to make use of the extraordinary powers, which declaration was accepted by Congress, and it follows from this that the said date is the one to be taken as the expiration of the extraordinary powers.

Considering, 2d.—That the extraordinary and very ample powers which the law of May 27, 1863, and the other similar laws of October 27 and May 3, 1862, and December 11th. and June 7th. 1862, granted to the Executive so as to enable him to save the national independence, are constitutional, since they are authorized by part 2d. of article 29 of the Constitution. This truth can be demonstrated with the following considerations.

The second part of article 29 says to the letter that Congress «shall grant the authorizations they may deem necessary so as to enable the Executive to face the situation.» One of the cases wherein the authorization to legislate should

be considered necessary, is undoubtedly when, during a foreign war, Congress foresee that their existence becomes impossible, and when they must seek to save the national independence; and such a case is really presented by the suit of *amparo* in question. If the third Congress who apprehended that they would be unable to perform their duties owing to the occupation of the capital by the French army and on account of other hazards of war, had not granted to the Executive in 1863 the authority to legislate, or if this Supreme Court should now declare that such authorization was unconstitutional, we would have to come to the inevitable conclusion that not only was everything that was performed during the war with France in defending our independence, an attack upon the Constitution, but, what is still more serious, that Mexico, from the moment Congress disappears owing to the machinations of her enemies, cannot any longer maintain her sovereign rights nor defend herself against her domestic or foreign foes, since the President has been unable to levy taxes, to increase the army, to dispose of the National Guard of the States, nor to issue, in a word, any law that may alter or interfere with the estimates in time of peace; and all this, notwithstanding the fact that Congress may have conferred upon him the authority to do everything that should be required. This argument *ab absurdo* has been made manifest by the French Intervention.

Considering, 3d.—That the law of August 16, 1863, issued by the President, by virtue of the authorizations which were granted to him by the law of May 27 of the same year, is legitimate, as has been shown in the preceding considerandum, and that, therefore, the appeal of *amparo* cannot be brought to bear against the same.

Considering, 4th.—That article 7th. of the said law of Au-

gust 16, which authorized the Council of Ministers to resolve upon questions regarding confiscation does not violate article 21 of the Constitution, since by virtue of the authorizations granted to the Government the guarantees contained in the said article were suspended, because the law of May 27, 1863, extended «the suspension of guarantees provided for by that of October 24, 1862, and the concession of the powers granted to the Executive,» and article 4 of the same law of October 24 only limits the extraordinary powers of the Executive respecting judicial matters in the following literal terms: «It is hereby declared that the Executive has not the power to interfere in nor decide upon civil affairs arising among private parties or criminal matters wherein may be involved offences against private rights,» and inasmuch as the crime of treason is one of those that affect public rights, it was by that fact beyond the limits prescribed by the said law.

Considering, 5th.—That although article 22 of the Constitution ordains that the penalty of confiscation is abolished *forever*, it cannot be doubted that the guarantee which regarding this point is contained in the said article, may likewise be suspended, since article 29 declares that «the guarantees granted by this Constitution may be suspended with the exception of those which assure the life of man.»

Considering, 6th.—That the accord which exists between the laws of December 11, 1861, May 3d. and October 27, 1862, and May 27, 1863, proves that the said guarantee was also suspended, although not in an express manner. The first of the said laws, «authorized the Executive in an unlimited manner to dictate all the measures which he might deem convenient, with *no other restrictions* but that of saving the national independence and integrity, the form of government

established by the Constitution and by the laws of Reform.» These ample powers and authorizations were extended until May 27, 1863, upon which date the President was empowered even so far as to conclude diplomatic treaties, and all this with the object of saving the national independence against the invasion of the French. And in these most ample authorizations we should also include that of dictating all the *convenient measures* against the traitors who joined the foreign enemy, measures which had no other restriction but that expressed by the law, that is, of saving the national Independence, the Constitution and the laws of Reform. Therefore, to suppose that the constitutional precept which prohibits confiscation remained in force respecting traitors, is not only to disown the spirit which dictated the said laws, but is to contradict and disown their literal tenor which withdrew all restrictions from the same, excepting the one already mentioned, as to the measures which the Government might deem fit to dictate in order to repel the foreign enemy and their allies.

Considering, 7th.—That even if the said laws which granted such ample powers to the Executive should not be interpreted in the above sense, neither should the enemies of the Republic engaged in a foreign war invoke in their favor article 22 of the Constitution to the effect that their property cannot be confiscated; because although the said article declares confiscation abolished *forever*, this is to be understood as an ordinary penalty in our Penal Codes, and the said precept cannot prevail in international matters nor limit the rights which are conferred upon belligerents by International Law. This truth, which besides all the other arguments which might be brought to bear in its support, is shown clearly by fraction XV of article 72 of the Constitution which

sanctions privateering, and it recognizes the legitimacy of the prizes captured on land or sea, and it accepts, as it could not fail to accept, the precepts of International Law respecting the rights of peace and of war.

Considering, 8th.—That as the Constitution of the Republic cannot establish international precepts but only determine the interior public laws of Mexico, it were absurd to apply the said Constitution to matters and affairs which can only be regulated by the law of Nations; because such an application would but serve to limit and restrict the rights of Mexico which are acknowledged by the said law, without even entertaining the hope of any reciprocity on the part of foreign powers, who are under no obligations as regards our Constitution; and the result of such an absurdity would be that Mexico in her international relations would remain under very unequal terms respecting foreign governments.

Considering, 9th.—That as the Constitution recognizes the right of confiscation, as it is sanctioned by international law whenever the latter and not the former has to be applied in certain matters, although the guarantee contained in article 22 be not suspended, the property of the enemy may be confiscated in the Republic, according to fraction XV of article 72 already quoted, and under the terms and in the manner prescribed by International Law.

Considering, 10th.—That during the war between Mexico and France, it was not the Constitution but International Law which defined the rights and duties of the belligerents, and that among the said rights that of capturing and confiscating the enemy's property on land or sea is fully recognized, without it being included among the limitations which in the exercise of that right have been established by the philosophical theories of modern authors, that of the enemy's

property who makes war personally and whose property is captured by the other belligerent; the consequence of all this is that, even had the constitutional guarantee on confiscation not been suspended, the Government of Mexico could impose the same, exercising the powers of war acknowledged by International Law and in due representation of the sovereign rights of the Republic.


Considering, 11th.—That this Supreme Court, in its writ of execution of July 2d., 1869, in a case similar to the present one, declared that the penalty of confiscation imposed upon traitors by the law of August 16, 1863, does not violate the individual guarantees, because the latter were suspended during the war, and that the said law is legitimate as having emanated from the ample powers which were conferred upon the Executive by the law of May 27, 1863, and other similar laws.

In view of the above considerations, and founded on articles 101 and 102 of the Constitution, it is hereby declared: that the sentence pronounced by the 1st. District Court of this Capital on the 20th. of July, 1878, ought to be reversed and is hereby reversed: and it is furthermore declared that the Justice of the Union does not shield nor protect Mrs. Dolores Quesada de Almonte as the widow and executrix of Mr. Juan N. Almonte, against the order of August 20, 1867, issued by the Treasury Department, and by virtue of which house n^o 10 situated in the 1st. Street of San Juan was confiscated.»

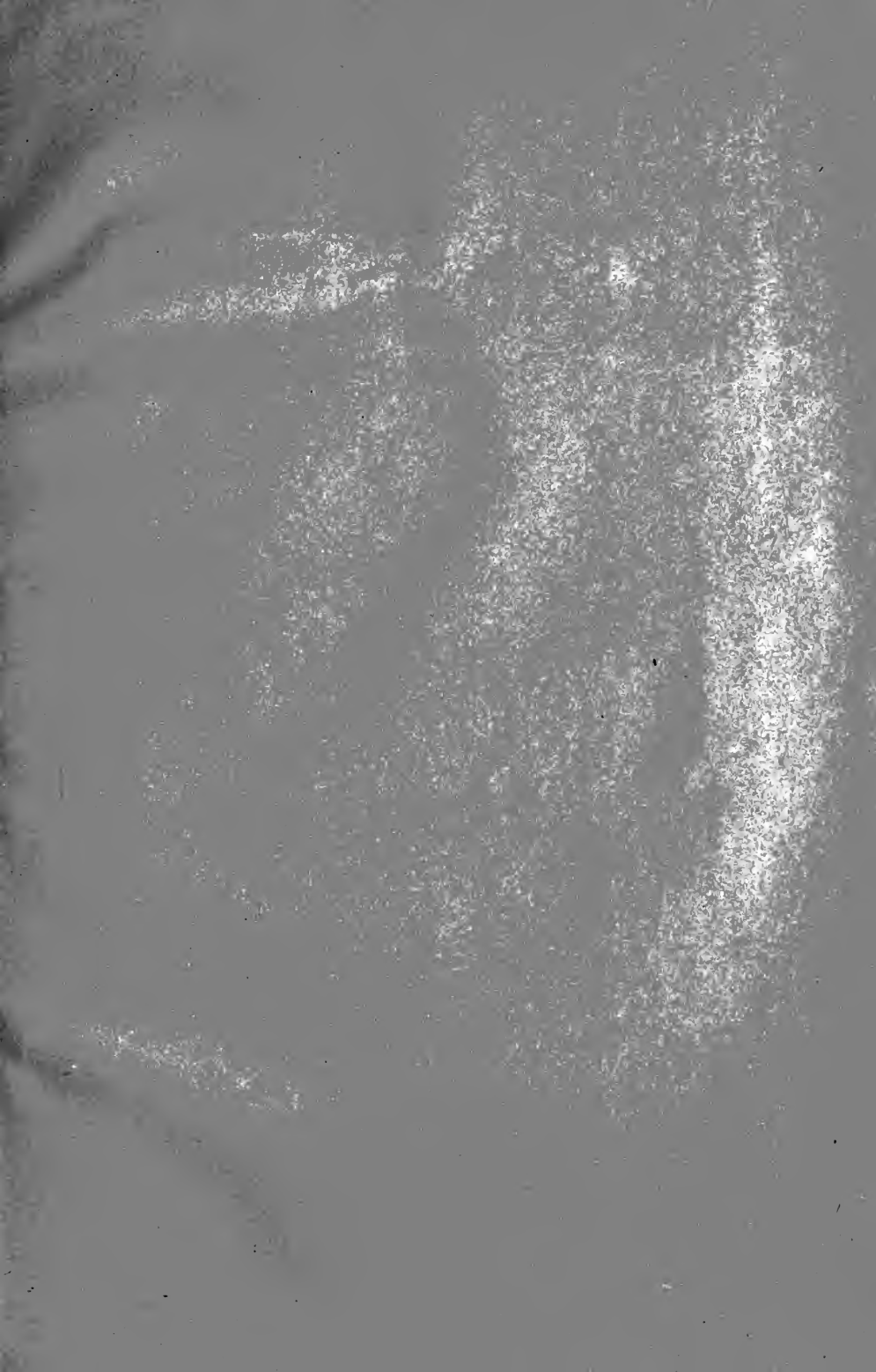
Let these proceedings be returned to the District Judge who sent them for their revision, accompanying him a certified copy of this sentence for its due effects; let it be published and put on file. Thus, by a majority of votes was it decreed by the Chief Justice and Magistrates who formed

full *quorum* of the Supreme Court of Justice of the United Mexican States, and they signed.—*Ignacio L. Vallarta*.—*Ignacio M. Altamirano*.—*Ezequiel Montes*.—*Manuel Alas*.—*José M. Bautista*.—*Juan M. Vazquez*.—*Eleuterio Avila*.—*Simon Guzman*.—*José M. Saldaña*.—*José Eligio Muñoz*.—*Enrique Landa*, Secretary.

The above is a certified copy of the original.—Mexico, March the third, one thousand eight hundred and seventy-nine.—(Signed) *Enrique Landa*, Secretary.



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